The Madras Law Journal

SOME REFLECTIONS ON THE EXPIRING YEAR.

By

PROF. S. VENKATARAMAN, B.A., M.L., LL.D.

Introduction.—Stemming from a belief that each succeeding year makes for increase in our knowledge and greater realisation of the oneness of humanity, Tennyson sang: "The year is going, let him go". Though undoubtedly the horizons of knowledge are steadily expanding and often even spectacularly, realisation of the unity of mankind remains a dream, a mere gospel to preach, but not actively to pursue and practise. The Hindu Scriptures carried the message (*vasudaiva kutumbakam*) of the world as one family. The Old Testament preached: "Nation shall not lift sword against nation: neither shall they learn war among men[1]". Islam, etymologically signifying peace, taught the brotherhood of man.

After the two world wars in particular, a wave of scepticism has come to prevail and religion has lost credibility with the younger generation. Science also could not replace it. True, science has conquered many diseases, broken the genetic code and placed human beings on the moon. Though it is yet to achieve the scientific production of human beings as visualised by Aldous Huxley in his "Brave New World", it has grown powerful enough to rouse men's curiosity to probe into the mysteries of Mars, Jupiter and Saturn. Scholars admit with each new discovery that it does not signify progress but always represents a set-back in the sense that instead of providing confirmation it only raises new questions, such as what of the H-bomb, or where is science when it ponders over the eternal riddles? Pursuit of infinite knowledge has so far slipped into the pursuit of infinite power. One is reminded of Dr. Faustus who, in pursuit of infinite knowledge, signed away his soul to eternal perdition in exchange for unbridled exercise of power for twenty-four years realising too late the gravity of his folly when the flames of hell began to scorch him. Likewise, Basmasura in the Hindu mythology in his eagerness to realise the potency of the boon he had secured, namely the power of destroying anything by his touch, ended by destroying himself. Knowledge and power instead of being utilised exclusively to serve the cause of humanity are used to pander to the curse of possession and serve wholly material and egoistic ends of the wielders of such knowledge and power. The first verse of the Iso-Upanishad high-lights the truth that joy is not in possessing but in giving, that attachment is the cause of sorrow, and that renunciation of attachment is the highest good. It lays down: "The whole universe and whatever exists in it is inhabited by the divine. So enjoy through renunciation. Covet not the wealth of any one". Was it not Rousseau, the prophet of the modern world, that asserted in his book "Discoveries of the Origins of Inequality" that "all the crimes, wars, miseries and horrors suffered by mankind were traceable to the first man who after enclosing a piece of ground took it into his head to say 'this belongs to me' and found people simple-minded enough to believe him"?

"Scorching in the fires of hell" has now become more than a possibility with the accumulation of nuclear stock-piles sufficient already for a complete world holocaust many times over. Immortal Shelley's prophetic words: "Men must reap the things they sow, Force from force must ever flow"—have been cast to the winds. The Helsinki detente has given place to cold war between the super-powers. SALT II agreement between the U.S. and the Soviet Union has been stalled. A hawkish brand of shortsighted politicians who, despite their own differences, would not transcend if they could and could not transcend if

1. Old Testament. Isaiah, II, 4.

they would their selfish interests within their national frontiers are holding the world *in terrorem.* It is not possible for any nuclear power to ensure peace to its people by mere deployment of strategic weapons inasmuch as the big powers have already developed the capacity to reach any enemy from its own domestic bases. Nor can acquisition of more bases on a global scale result in anything more than spreading war-psychosis. The wise and proper thing to do is to spend more time and effort in working for peace than to plan for more and more fighting potential.

The United Nations.—The United Nations despite all its imperfections and weaknesses remains the only hope for the survival of humanity. The lukewarm and at times the minatory attitude adopted by the big powers towards that body has not only made it look imbecile but has also afforded indirect encouragement to even the lesser powers to defy the U. N. resolutions with impunity. The Palestine problem continues to be as intractable as ever. The Iran-Iraq war is posing another threat to world peace. President Carter of the U. S. A. said at a workmen's convention recently that 'if Israel were expelled from the U. N. General Assembly, the U. S. would probably leave that body. Such an illegal expulsion of a member of the family of nations will raise the gravest questions about the future of the General Assembly and further participation of the U. S. and other nations in the deliberations of that body[2]". Israel enjoys the dubious reputation of being a consistent defier of U. N. resolutions. Yet President Carter talks in terms of the U. S. leaving the U. N., if action is taken against Israel. It is too much to expect the U. N.'s prestige to shoot up during the Reagan regime in view of his hard-core conservatism. Another matter for disquietude is that the Conference on Indian Ocean due to be held in Colombo in 1981 in terms of the relevant U.N. Resolutions envisaging elimination of great powers' rivalry, to transform the Indian Ocean into a zone of peace, has run into difficulties because the U. S. and other western powers do not consider the present context an appropriate time for such a Conference in the wake of the current Hormuz Gulf war. To aggravate the situation an international naval armada in and around the gulf region, of ships of various sizes ranging from nuclear-powered aicraft-carriers to a dozen supply ships cruising with the fleet developing a capability to get together a rapid deployment of 18,000 troops within a few days has been built up. Besides expanding the Diego Garcia base the U. S. is negotiating for bases in Oman, Saudi Arabia, Somalia, Kenya and Egypt and seeking facilities from Australia, Sri Lanka and Singapore. As against this, in its turn, the Soviet Union with about half the number of ships has been operating from Sacrota and Aden in South Yemen and Massawa and Asab in Ethiopia, as a projection of the massive land-based military power along the border of the Gulf States, Iran and Iraq[3].

The expiring year has been a year of contradictions, of turbulence and turmoil, of plenty and poverty, of flood and drought, of lavish promises and poor performances. Notable happenings both abroad and within the country during the year are: Consensus on use of sea-bed resources, the passing away of Marshal Tito, the emergence of Zimbabwe (formerly Rhodesia) as an independent State, Soviet presence in Afghanistan, Iran-Iraq War, Stationing of an international naval force in the vicinity of the Gulf of Hormuz, the defeat of President Carter in the U.S. Presidential elections; the return of the Indira Congress to power, unprecedented floods and drought side by side, floods in Gujarat United Provinces, Bihar and Orissa, drought in Andhra Pradesh, Karnataka, Rajasthan and Haryana; the Assam agitation over "foreigners", etc.

Consensus on use of sea-resources.—A grand achievement in the international sphere is the consensus on use of sea resources. The monumental work on the law of the sea which started under U.N. auspices way back in 1968 has practically concluded after nine sessions and marathon negotiations with a broad accord on the establishment of an international sea-bed authority with a complicated

2. "*The Hindu*", Madras, 2nd October, 1980.

3. "*The Hindu*", Madras, 21st November, 1980.

voting system for regulating the exploitation of the under-sea mineral resources and equitable division of the wealth among all the nations. Only a ninth of the major issues involved in the 500 clause draft treaty that they have to agree upon remains to be tackled and this is expected to be done when the 140 odd participants of the U.N. Law of the Sea Conference meet in July, 1981. The more cautious among them think that 1982 may be a more realistic date. The treaty will be a significant achievement because the process of arriving at a consensus—it having been wisely recognised that no other type of accord would be regarded as binding enough—particularly on how to share seventy per cent. of our planet "has been an extraordinary international exercise involving conflicting interests and complex issues likely to generate more heat than light. Some curious and unlikely alignments were witnessed on certain questions. Commonality of interests between the U.S., U.S.S.R. and India by reason of their long coastline found them together on some issues: Austria, Afganistan, Bhutan and Bolivia were drawn together because they were landlocked states with no coast line at all. Having regard to the size of the stakes involved the degree of agreement arrived at is remarkable. It is estimated that while in the sea-bed there are three trillion tons of mineral nodules containing nickel, copper, cobalt and other precious minerals and 2.7 trillion barrels of oil, fish-yields from the oceans can go up to 4 billion tonnes a year.

A consensus has already been arrived on a 12-mile territorial limit, a 200-mile exclusive economic zone and on the distance to which the continental shelves of a country may extend (350 miles in most cases). Agreement is reported in principle on land-locked countries' access to the surplus resources of adjacent coastal States (for instance, India *vis-a-vis* Nepal and Bhutan), prevention of marine pollution and freedom of passage through exclusive economic zones.

An agreement between India and Sri Lanka on the outer limits of their continental shelves in the Bay of Bengal-Indian Ocean region has also emerged. There was no doubt agreement even previously between the two countries on the matter but it was threatened with opposition from the Soviet Union and some other countries. The problem arose because of a ridge technically known as 90 degrees east ridge jutting into the Indian Ocean from the Bay of Bengal. It has now been agreed at the Conference that in the case of an intervening ridge or a submarine elevation the continental shelf of the country concerned could go beyond 350 miles.

The Conference decided that the Sea-bed Authority would form an Enterprise for sea-bed mining. The industrialised nations and other capable States could work out sea-bed mining up to 50% in international waters. The rest would be done by the Enterprise to be set up. It would be in a position to do so by 1990 As far as the financing is concerned each nation would give 50% of the cost of mining work as cash to the Sea-bed Authority for utilisation by the Enterprise. For the remaining amount the countries would stand guarantee on loans which the Authority would secure from the World Bank or from even the industrialised nations. The industrialised nations would transfer technology to the proposed Enterprise for 10 years from the date it was ready for sea-bed mining.

The contracting nations will have to share the profits on the stipulated scale with the international Enterprise set up by the Sea-bed Authority and the total pooled wealth will be divided among all the nations.

The 36 member Authority or governing council will have ample powers to control not only the exploitation of the tremendous sea-bed wealth but also to protect and preserve the marine environment and interpret and apply the law of the sea relating to the jurisdiction of the coastal States over exclusive economic zones along the continental shelves. The membership of the Council will be so composed as to ensure adequate and equitable representation for all geographical regions and groups of countries engaged in deep sea-bed mining under its licence, countries that consume these minerals and countries that already produce the same minerals on their respective territories and are likely to be economically affected by the flow of additional supplies into the world markets.

The new sea-bed convention will be in the nature of a comprehensive constitution with its own in-built checks and balances for peace-

ful uses of the under-sea resources in an area covering nearly three-quarters of the earth's surface. The new Sea-bed Authority which is expected to come up after the convention is ratified by the member-nations sometime in September, 1981 at Caracas will have all the powers of a supra-national regime covering the ocean expanses.

Tito legend passes into history.—The last of the founding-fathers of the non-aligned nations organisation is gone. With Tito's death a legend passes into history. Out of the ashes of the second world war arose the present State of Yugoslavia as a communist-socialist State. Ever since then Marshal Tito had guided its destinies. Not the least spectacular of his acts was his standing up to Stalin, then at the plenitude of his power, claiming for his State the right to develop its own brand of socialism and getting away with it. Mr. Steven Doronjaki who succeeded Tito as the communist party chief described Yugoslavia's break with the Soviet bloc in 1946 as one of the turning points in the history of that State. For the millions in the third world non-aligned nations, he has been a key figure in imparting credibility and vitality to the organisation and making it a third world between the groups centred round the two super-powers. The western world was fascinated by Tito's political balancing and tight-rope walking in his quest to keep his country both united and non-aligned. No wonder therefore that his funeral witnessed one of the biggest gatherings of world-leaders in history attended by 155 delegations which included 4 Kings, more than 30 Heads of State, Prime Ministers and a host of top officials from more than 100 countries.

Mrs. Indira Gandhi's return to power.—Mrs. Gandhi was voted back to office in even more dramatic circumstances than when she was voted out in 1977. Her return to power is the quickest come-back in recent political history. The dimensions of her achievement are particularly impressive because it was essentially a one-person achievement and at a time when her party was not in power in any of the States except one. It is really remarkable that such a thing can happen on a sub-continental scale without any major upheaval for ushering in so far-reaching a change through a mere swing of the electoral pendulum.

But uneasy lies the head that wears a crown. The summit of power is a lonesome place. In a few weeks she will be completing the first year of her return to power. The primacy of the Prime Minister is at the very basis of democracy. She must have talented lieutenants who could work as a team to function effectively as a government. There is a paucity of talent at the ministerial level. The administrative service stands demoralised by the tinkering of successive governments with it. The country is plagued by mounting inflation and soaring prices due more often than not to world factors. Further it looks as if the lessons of the past have not been assimilated fully. There is a proneness to smell a conspiracy behind every public grievance and to attribute a sinister complexion to any move of an opposition to identify itself with any agitation. Equally opposition seems to think that its duty is to oppose the government on all matters. The opposition continues to be a conglomeration of fragmented parties each pulling in a different direction. It is disquieting to find a confrontation between the government and the opposition instead of introspection and constructive co-operation over major problems. Democracy depends for its functioning on some purposive impetus, some viable attitude not only widely shared but clearly understood in all its inwardness. Is democracy nothing more to our politicians than "a baloon grounded periodically and floated after a re-fill"?

Resort to direct action and the judiciary.—Resort to direct action has become the order of the day. It has ceased to be the preserve of factory workers. White-collar workers are no exception. Even government servants, teachers and members of the learned professions have been drawn into its vortex. In this context a letter from Mr. P. Basi Reddy from Cuddappah[4] makes interesting reading pinpointing attention to present-day trends. The letter recites: "There is much truth in the saying 'sow the wind and reap the whirlwind'. Sometime ago the Supreme Court Bar Association took the unprecedented step of staging a boycott of a Judge of the Sup-

4. "*The Hindu*", 24th March, 1980.

reme Court for not giving full hearing to an advocate to a Special Leave petition. Shortly thereafter, the Andhra Pradesh High Court Advocates Association emulated the Supreme Court Bar Association and boycotted a Judge of that High Court to register its displeasure at the summary dismissal of a Second Appeal, without adjourning it to accommodate a lawyer. Now a women's organisation is bent upon a 'gherao' of the Supreme Court for the alleged wrong judgment handed down by a Division Bench of that Court in the Mathura Rape Case. All these are instances of direct action against the higher judiciary for the redressal of grievances — real or imaginary. The sooner this unhealthy trend is arrested the better it would be for the fearless functioning of the Judiciary in our country. There is a limit even to judicial valour".

Apropos the petition filed by the State of Maharashtra for review of the Supreme Court judgment in the Mathura Rape Case, when counsel for the All India Women's Conference sought to press for their *locus standi,* Justice Untwalia is said to have observed: "The Court was sought to be cowed and its judgment tested by rallies and slogans in the streets. It is unfortunate so long as we are servants of this Court we must protect the prestige of the Court"[5].

As Justice Khanna recently observed[6]: "There is no office which is so infinitely powerful and at the same time so frightfully defenceless as that of a Judge". *Vis-a-vis* the other organs of the State the judiciary is the weakest. It has neither the power of the purse nor of the sword, neither money nor patronage nor even the physical force to enforce its decisions. In spite of this, if Courts have by and large enjoyed high prestige and great respect, it is because of their moral authority and the confidence that people have in the role of Courts to do justice between the rich and the poor, the mighty and the weak, the State and the citizens without fear or favour. To quote Justice Khanna again: "We in the world of law have always decried executive arbitrariness. Much worse than executive arbitrariness is judicial arbitrariness"[7].

Legal Aid Service.—Article 39-A of the Constitution introduced by the Constitution 42nd Amendment, effective from 1st February, 1977, can be regarded as the constitutional charter for legal aid in our country. The Article reads: "The State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way to ensure that opportunities for ensuring justice are not denied to any citizen by reason of economic or other disabilities". In the words of Bhagwati, J., a comprehensive legal service programme "is not only a mandate of equal justice implicit in Article 14 and right to life and liberty conferred by Article 21, but also the compulsion of the constitutional directive embodied in Article 39-A"[8]. Philipinnes is probably the only other country with a constitutional provision for legal aid. In the United States of America Congress has recently adopted legislation for legal service to the poor. It may be noted that in the U.S., there are 29 million poor people as against 300 millions in India. The problem in India is therefore stupendous with a far larger poor

5. "*The Mail*" 3rd April, 1980.

6. Reform of the Judiciary, III, by H.R. Khanna—See "*The Mail*" Madras, 26th October, 1980.

7. Ibid, II, "*The Mail*" Madras, 24th October, 1980.

8. *Hussainara Khatoon* v. *Home Secretary,* (1979) 2 S.C.J. 535.

population. In the States among other things legal service plans utilise law students under the supervision of a professor. In our country also such legal clinics, in Universities have been set up at a number of Centres. Legal service for the poor is a societal obligation. Prof. Kenneth Robert Redden, Professor of Law at the University of Virginia Law School, points out: "A society that requires its citizens to live within the law must ensure their access to the institutions and remedies of the legal system regardless of economic considerations. Inability to utilise the legal system can be disastrous for the poor for whom the laws will then have no relevance"[9]. The poor people generally do not know the remedies they have under particular circumstances. It is a question of educating the poor, of eradicating legal illiteracy. They ought to know what Courts are open to them and on what terms. with no wherewithal to pay court-fee and lawyer's fee.

Over-crowded Courts, high cost of litigation, delays in disposal of civil suits have compelled adoption of alternative disputes-resolution systems as the remedy for legal congestion, like local arbitrators and mediators in handling small claims and civil cases. In the U.S. the law recently enacted by the Congress enables setting up of Neighbourhood Legal Service which would serve as alternatives to regular Courts. Federal money having been made available under local control, the services are expected to be in operation soon to settle through mediation a wide assortment of disputes — domestic spats, claims by customers against merchants, matters between landlords and tenants—that clog the dockets of the lower Courts in the U.S. Prof. Redden remarked *inter alia* that Tamil Nadu has marched ahead of many countries and under legislation like the Workmen's Compensation Act and Motor Vehicles Act placed on employers and motor vehicle owners the responsibility of informing the victim of the remedy open to him.

In Tamil Nadu, in furtherance of the directive principle in Article 39-A, a Society, "The Tamil Nadu State Legal Aid and Advice Board" was formed and registered under the Societies Registration Act and has been functioning from April, 1977. The Legal Aid Programme in Tamil Nadu "is not limited to assisting people to institute or defend proceedings in Courts or Tribunals. It gives equal if not the first priority, to the giving of advice on a variety of problems which impinge on the welfare of the poor and the backward and in which relief is to be secured through administrative authorities. The programme is also compromise-oriented based on the firm conviction that the problems of the poorer and weaker sections of the community are mostly of a simple nature and should be resolved as far as possible without recourse to protracted Court proceedings"[10]. Statistics available in relation to the functioning of the Board from its inception down to 31st December, 1979, are revealing. The Board received during the period 3,747 non-legal applications, 657 applications for claiming maintenance, 972 in accident claims, 353 in criminal trials, 107 in criminal appeals, and 6,143 applications in legal matters other than the categories referred to: 3,125 of the applications were from women, 1,940 applications, belonged to Scheduled Castes, 152 to Scheduled Tribes, 90 applications were under tenancy laws and 109 applications were under labour laws. 534 matters were settled under the aegis of the Board. 367 matters have been disposed of in Courts and 819 matters are pending in Courts. Of the

9. "*The Hindu*" Madras, 10th August, 1980.

10. See "The Saga of unique and extraordinary Social Justice," by Shri Prabhudas Patwari, (1980) 2 M.L.J. (Journal) p. 39 at 40.

matters disposed of in Courts, decisions in over 70% have gone in favour of the assisted persons. The Board has secured awards of the value of Rs. 3,83,400 for victims of accidents and Rs. 14,850 to workmen under Workmen's Compensation Act[11].

The adage that good causes seldom require publicity is, at any rate, not true in modern conditions of life. Like medicare, judicare has many facets to be fostered calling for devotion and dedicated service. It is to be ardently desired that the tiny acorn will in course of time grow into a mighty tree and the Tamil Nadu Legal Aid Programme will forge ahead and serve as a pace-setter.

Women's movement in India.—An active self-generating women's movement has yet to develop in our country. Hitherto it is only the educated women in the cities and towns that have been conscious of women's rights. Most of the women in rural areas—and they form the majority of our women folk—have not heard about or understood the implications of the women's liberation movement. If the women's movement in this country had not so far achieved better results it is due to a number of reasons. Firstly, the movement has been confined to the upper and middle class women. Secondly, its activities have been focussed on particular problems, like higher wages for working women, better working conditions etc. It has not taken up women's cause in general. Thirdly, the movement is sponsored by political parties to subserve party advantage and to toe the party line on all matters. The increasing incidence of offences and atrocities against women now being seen has highlighted the urgency for the women's movement to be properly organised so as to make it a force to reckon with. The movement will be effective only if it is organised from the grass roots with leadership provided by women themselves. In this context the book "We will smash this Prison" by Gail Omvedt recently published furnishes a mine of information. It is not as if the women in villages are under illusions as to their conditions of life or are not indignant about them. It is not as if rural women when roused cannot achieve results. The agitation of women in and around Ahmednagar against the famine situation in the mid-seventies tells its own tale. Women agriculturists are reported to have barged through police lines with the children on their hips and tied the officials to trees. At another place by the time a women's meeting came to a close they had become so thoroughly roused that they marched to the liquor shops of the village, smashed all the jars and bottles forcing the headman to apologise for allowing the liquor trade to go on unchecked. If properly organised the women's movement could lead a fight against for instance, caste distinctions, religious superstitions, illiteracy, dowry evil, male oppression etc. The recent political victory won with Parliament seeking to amend the rape law should give it a great boost. The year 1980 has verily proved to be the rallying point for women at all levels, urban and rural, the educated and the not so much educated, of all communities to come together.

Conclusion.—The Prime Minister observed that the nineteen-eighties have started ominously in international affairs. The domestic front also reveals an unhappy state of affairs torn by factions and personal rivalries. To many lawyers it is rather puzzling that while at every turn there is a rush to the Supreme Court for remedies of various types, at the same time, the Court is subjected to criticism threatening to undermine the independence of the judiciary. One can only console oneself

11. *Ibid*, pp. 42-43.

with the thought that "all sorts of things make the weather and the sphere". And one is reminded of Tagore's soul-stirring prayer:

"O Serene, O Free
In thy innumerable mercy and goodness
Wipe away all dark strains from the heart of this earth.
Man's heart is anguished with the fever of unrest,
With the poison of self-seeking,
With a thirst that knows no end.
Countries far and wide flaunt on their foreheads
the blood-red mark of hatred,
Touch them with thy right hand,
make them one in spirit,
bring harmony into their life,
bring rhythm of beauty."

WHETHER FORBEARANCE TO SUE AMOUNTS TO OMISSION TO SUE?

By

M. R. SREENIVASAN, M. A., M. L., *Assistant Professor (Mercantile Law), D. G. Vaishnav College, Madras.*

Forbearance to sue means refraining or abstaining from suing which may arise out of an agreement or because of the protection given under law. On the other hand, omission signifies a contumacious breach of an obligation or duty either under law or agreement. Omission has been defined in the Oxford Dictionary as "leave undone, neglect doing or failing to do". Hence failing to do what ought to have been done results in omission. Refraining to do is something which is not a failure of an obligation but a reservation of a right because of protection given under law. From a plain perusal of the meaning of the aforesaid terms it is clear that forbearance to sue normally does not result in penal consequences whereas omission to sue may result in penal consequences because there is breach of duty or legal obligation either under contract or law. We can also say that a person's omission of an obligation because of *protection under law* is forbearance. Similarly an act of omission of an obligation *without protection under law* is a flagrant breach of duty.

A reading of section 134 and section 137 will bring out the *apparent* contradiction between the two terms. Section 134 says "The *surety* is *discharged* by any contract between creditor and the principal debtor by which the principal debtor is released, or by any act or *omission of the creditor*, the legal consequences of which is the discharge of the principal debtor. Section 137 reads "*mere forbearance* on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety."

It is stated[1]: "On the question whether an omission by the creditor to sue the principal debtor within the period of limitation is to be construed as an act or omission of which the legal consequence is the discharge of the principal-debtor under the present section 134 or a mere forbearance to sue in section 137-C, in a very early decision in *Salig Ram* v. *Lachmandas*[2], it has been held that if by efflux of time the remedy against the principal debtor has become barred, the surety is also discharged. The same High Court has distinguished the above case in *Anand Singh* v. *Collector of Bijnor*[3], that the act or omission of the creditor which is contemplated by section 134 must be something in the *nature of breach of the* contract and therefore failure to sue the debtor within the period of limitation will not suffice to invoke this section. Following the above view it has been held[4] by the High Courts of Bombay[5], Calcutta[6], Madras[7], Lahore[8], Allahabad[9] and Rangoon[10], that the surety is not under such circumstances discharged from liability to the creditor. It is also thought in England that omission of the creditor to sue within the period of limitation does not discharge a surety for another and more substantial reason that the surety can himself set the law in operation against the debtor[11]".

Although a catena of cases brings cheek by jowl that failure on the part of the creditor to sue the debtor within the limitation period does not discharge the surety, still the contradiction between sections 134 and 137 remains unsolved.

Is the omission envisaged *under section 134, equivalent to forbearance to sue under section 137?* It has been clearly pointed out that the omission that is refered to under section 134 has reference to performance under sections 39, 53, 54, 55, 63 and 67 of the Contract Act. Is mere *forbearance to* sue tantamount to omis-

---

1. T. S. V. Iyer—"Indian Contract Act" (1934) page 727.

2. (1928) I.L.R. 50 All. 211.
3. (1932) I.L.R. 54 All. 1007.
4. From Mulla's Contract Act, pages 208, 209 (Students Edition). 9th Edition, 1972.
5. *Hajarimal* v. *Krishnan*, (1881) I.L.R. 5 Bom. 647.
6. *Krishto Kishori* v. *Radha Raman*, (1885) I.L.R. 12 Cal. 330.
7. *Subramania Iyer* v. *Gopala Aiyar*, (1909) I.L.R. 33 Mad. 308.
8. *Dil Muhammad* v. *Sain Das*, (1927) 100 I.C. 922.
9. *Aziz Ahmad* v. *Sher Ali*, A.I.R. 1956 All. 8 (F.B.).
10. (1932) I.L.R. 12 Rang. 398.
11. *Carter* v. *White*, (1883) 25 Ch.D. 666, 672.

sion? If that be so under section 137 the surety gets himself automatically discharged from liability to the creditor, whereas it is not the case.

The key to the problem lies in understanding the implicaton of section 134 which speaks about omission. The omission that is spoken to in section 134 may arise out of deliberate act *i.e.*, a positive act or it may be out of deliberate negligence or supine indifference.

Omission	deliberate Omission by an act or by a contract *i.e.*, by a *positive Act.*	promise by creditor not to sue (section 135)
	deliberate omission arising out of negligence *i.e.*, supine indifference., *i.e.*, by a *negative Act.*	negligence under sections 134 and 139.

The above classification may indicate the difference between positive and negative acts, of omissions which are wanton and wilful. This may be illustrated by an example. Supposing the surety reasonably apprehending that the debtor is trying to leave the local limits of the jurisdiction of the country informs the creditor by letter to proceed against him without fail and the creditor ignores the letter of the surety and keeps quiet, this will be a *positive omission* in which case, the surety certainly will be absolved from his liability. So also where a creditor allows the suit against the principal-debtor to abate by not bringing the legal representatives on record the surety will be discharged; *Nur Din v. Allah Ditta*[12]. Further it must be understood that varying the terms of the contract expressly without the knowledge of the surety under section 133 is a positive act of omission to adhere to the terms of the guarantee by the creditor.

The negative act *i.e.*, deliberate negligence (omission) is best brought out in the case of *State of Madhya Pradesh* v. *Kalu Ram*[13]. Facts may be succinctly summarised as follows: *J* being the highest bidder at an auction held by a Government Forest Department was allowed to take delivery of the severed trees on the guarantee given by *K*, with a condition that the value should be paid in four equal instalments and that the instalment sum must be paid first, before taking delivery of the 'felled trees'. No doubt *J* paid the first instalment and took the trees, but unfortunately the Government without collecting other instalments allowed *J* to take delivery of the remaining severed trees. When a suit was filed against the surety the Court held that the surety is completely discharged because of negligence of the creditor *i.e.*, the Government. We find this aspect mentioned in E. Venkatesam's "Mercantile Law" 1975, 8th Edition, at page 119 where the author says "that section 141 *does not apply only* to *cases in which by positive action of creditor*, he has lost or parted with secutity without the consent of the surety". This implies a negative act or negligence on the part of the creditor which would absolve the surety.

Similarly where the surety has given guarantee to the creditor on his obtaining four properties as security from the debtor and if the creditor got only three properties, the surety is discharged (*Pratap Singh* v. *Keshavlal* [14]).

Mere forbearance to sue is not omission on part of the creditor either by positive or negative acts. Section 137 has got to be read with section 128. According to section 128

12. A.I.R. 1932 Lah. 419.

13. (1967) 2 S.C.J. 823 : (1967) 1 S.C.R. 266 : A.I.R. 1967 S.C. 1105.

14. (1926) I.L.R. 50 Bom. 180 (P.C.).

the liability of the surety is co-extensive, meaning thereby that the creditor can straightaway proceed against the surety without proceeding against the principal debtor. Hence forbearance to sue hinges very much on the right of the creditor which gives him power to proceed against the surety. The very purpose of the surety contract and co-extensive liability of the guarantor will be stultified if section 137 is misinterpreted as omission. Therefore according to section 128 the creditor need not proceed against the debtor first before taking action against the surety in the absence of a contract to the contrary, because the surety's liability is always co-extensive. So let us not read section 137 in isolation which is very much coupled with section 128.

Some efforts had been made by the Privy Council, to bring about reconciliation between 134 and 137 in the case of *Mahant Singh v. U. Bayi*[15]. In that case[16]. the plaintiff was engaged as a contractor by certain trustees of a pagoda for construction work. The payment by the trustees was guaranteed by the defendants. The trustees defaulted and therefore the plaintiff sued the trustees and the surety. The beneficiaries of the trust replaced their trustees and the plaintiff dropped his case against them and was not allowed subsequently to sue them in their personal capacity. But the suit against the surety was maintained. "The appellant's act in continuing to sue the surety though he withdrew his action against the principal-debtor is a clear *reservation of his rights*. The remedy of the surety against the principal debtor is not impaired and his liability is therefore not discharged". From the above decision forebearance conveys the meaning as exclusive reservation of the right of the creditor which may be express or implied.

To sum up it must be noted with caution that limitation period between the surety, creditor and debtor depends very much on the facts and circumstances of the case and the terms of the contract. At times the surety may give his guarantee after the creditor has advanced the money to the debtor in which case there must be extra consideration in the form of forbearance to sue, reduction of interest etc., by the creditor.

A recent case *Bank of India v. MathaGoundar*[17], may be cited. The ruling laid down by the Division Bench reported in *Muthukaruppa Mudali v. Kathappudayan*[18], has been followed wherein the learned Judges have quoted Volume 20, 4th Edition of Halsburys Laws of England particularly to para. 116 which says that mere factum of forbearance to sue is not sufficient to constitute consideration for a person becoming a surety for the debt but there must be a promise, an undertaking to forbear or an actual forbearance at the surety's Express or Implied request and such promise of the creditor must be capable of being enforced. Therefore the limitation period for the surety depends very much on the facts and circumstances of the case in the light of the specific terms of the contract which he has entered into with the creditor. From the above it is quite obvious that *forbearance* is not omission and there is difference between the two.

---

15. (1939) 2 M.L.J. 253: 66 I.A. 198: 50 L.W. 27: A.I.R. 1939 P.C. 110.
16. From Avatar Singh "Law of Contract" (1973) page 279.
17. (1980) T.L.N.J. 117 at 123.
18. (1914) 27 M.L.J. 249: 25 I.C. 726.

A NOTE ON GOVINDARAJA ODAYAR v. ADIMOOLA ODAYAR, (1980) 2 M.L.J. 504: 93 L.W. 514.

By

S. GOVINDARAJAN, *Advocate, Chidambaram.*

The judgment in this case is apt to circumvent and explain away the decisions of the Supreme Court and of our High Court.

The facts are briefly these: The respondent before the High Court filed a suit for declaration and injunction in respect of some lands. Subsequently he amended the prayer and asked for the relief of possession. The suit was decreed and the decision was upheld by the first Appellate Court and by the High Court on second appeal. After the disposal of the second appeal, he filed an application for ascertainment and for grant of a decreee for future mesne profits under Order 20, rule 12, Civil Procedure Code, and the petition was allowed.

The contention put forth by the appellant that the provisions of Order 20, rule 12, Civil Procedure Code, will not apply as the suit was instituted for declaration and injunction, has been upheld by the learned Judge.

Order 20, rule 12, Civil Procedure Code, clearly says that in a suit for recovery of possession, the Court can pass a decree directing an enquiry into future mesne profits also. There is a direct decision of the Supreme Court on the point reported in *Gopalakrishna Pillai* v. *Meenakshi Ayal*[1], holding that the Court had the power to grant a decree for future mesne profits even though it was not specifically asked for in the plaint, the grant of relief being explicit from the terms of Order 20, rule 12, Civil Procedure Code.

The learned Judge distinguishes the decision of the Supreme Court and observes: "In the present case the suit was originally for a declaration and injunction and subsequently, it was amended for the relief of possession. The suit was not for possession and for rent or mesne profits. Therefore on the clear provisions of Order 20, rule 12, Civil Procedure Code, this is not a suit in which the Court is empowered to direct an enquiry as to future mesne profits by way of passing a decree in the suit itself .... The decision of the Supreme Court therefore is not an authority for the position that even though the suit is not for possession, nevertheless the Court can pass a decree not only for possession but also for mesne profits".

The learned Judge has overlooked one important factor *viz.*, the effect of amendment of pleadings. It is now a settled position of law that the amendment relates back to the date of plaint. When once an amendment of plaint is allowed, it is as if the amended plaint was put into Court on the date of plaint: Vide *Satyanaraina Rao* v. *Venkataswami*[2]; *Seth Nandarandas Atmaram* v. *Zulika Bibi*[3] and *Infan Ahmad* v. *Nabil Ahmad Khan*[4].

In this case when once the plaintiff has been permitted to amend the plaint, it relates back to the date of plaint and so in effect it is as if a suit for recovery of possession has been filed on the date of plaint. The decree also was for recovery of possession. The provisions of Order 20, rule 12, Civil Procedure Code, are attracted and the decision of the Supreme Court squarely applies to this case.

I therefore respectfully submit that this decision requires reconsideration.

---

1. (1967) 1 M.L.J. (S.C.) 89 : (1967) 1 An. W.R. (S.C.) 89 : (1967) 1 S.C.J. 450 : 1966 S.C.R. (Supp.) 128 : A.I.R. 1967 S.C. 155.

2. (1933) 143 S.C. 504: A.I.R. 1933 Mad. 153.
3. (1943) 2 M.L.J. 1 I.L.R. (1944) Mad. 133: 56 L.W. 583 : 212 I.C. 533 : A.I.R. 1943 Mad. 531.
4. A.I.R. 1972 All. 15.

A STUDY OF DEWAN DOULATRAI KAPUR AND OTHERS v. NEW DELHI MUNICIPAL COMMITTEE AND OTHERS, (1980) 1 S.C.C. 685: (1980) 1 S.C.J. 468 : 122 I.T.R. 700 : (1980) 1 I.T.J 530: (1980) 2 S.C.J. 10:A.I.R. 1980 S.C. 541.

By

R. GOVINDARAJAN, B.A., B.L., *Advocate, Madurai.*

The determination of the annual rental value by the Municipal authorities for levy of tax on a building has been the subject-matter of judicial decisions for more than a decade. The above case is a land mark and has completely set right the controversy and has laid down that the landlord cannot reasonably expect to collect more than the standard rent or fair rent payable in accordance with the principles laid down under the provisions of the Rent Control Act, in the various States.

The Court also reiterated the principles laid down in *Guntur Municipal Council v. Guntur Town Rate Payers' Association*[1] and *The Corporation of Calcutta v. Life Insurance Corporation*[2].

In this case under study a distinction was sought to be made for the building for which fair rent has been fixed by the Rent Controller and for the buildings for which no fair rent had been fixed under the provisions of the Rent Control Act. The Court categorically laid down that the assessing authority has to perform the task of fixing the fair rent to the building as part of the process of assessment and in doing so it should not usurp the function of the Rent Controller because it does not fix the standard rent or fair rent which would be binding between the landlord and the tenant, but merely arrive at and estimate the standard rent for the purpose of determining the annual value of the building.

The next question that came up before the Court was whether the principles apply where the Rent Act is not applicable to a building either because it was a new building or it cannot apply because the tenant had not applied for the fixation of fair rent within a period prescribed under the provisions of the Rent Control Act in the Northern States or whether the owner himself occupies the building for which there will be no necessity for fixing the fair rent. In all these cases the Supreme Court held that the method to be adopted is as per the provisions of the Rent Acts.

While so, a case went before the Supreme Court in *Municipal Corporation, Indore* v. *Smt. Rathina Prabha*[3] where it had been held that where fair rent had not been fixed under the provisions of the Madhya Pradesh Accommodation Rent Control Act, 1961, the question of standard rent does not arise as it would be permissible for the landlord to get enhanced rent without regard to the provisions of the Rent Control Act. The Court doubted the correctness of the decision and stated that the above decision did not apply the correct principles of law. The Supreme Court again negatived the contention that even though the landlord may receive a higher contractual rent than the fair Rent or standard rent the Municipal authorities have no right to assess the annual value on the basis of the rent actually received by the landlord.

Now as to an owner-occupied building for which there will be no occasion to fix the fair rent or standard rent under the provisions of the Rent Act the assessing authority has to fix the standard rent or fair Rent on the principles laid down under the provisions of the Rent Acts because the Court says the hypothetical tenant to whom the building is hypothetically to be let would not suffer from this disability created by the bar of limitation and further as to owner-occupied building the annual value would be limited by measurement of standard rent determinable under the Rent Act and it can be reasonably presumed that no hypothetical tenant would ordinarily agree to pay more rent that what he could be made liable to pay under the Act. Thus the decision has laid at rest, the various interpretations that could be given for assessing the annual value of the building.

While so in the decision, *C.G. Ramanathan v. The Commissioner, Corporation of Madras*[4], Ramaprasada Rao, CJ., has laid down

1. (1972) S.C.C. 803: (1971) 2 S.C.J. 142: (1971) 2 M.L.J. (S.C.) 7:(1971) 2 An.W.R. (S.C.) 7: (1971) 2 S.C.R. 423: A.I.R. 1971 S.C. 353.
2. (1970) 2 S.C.C. 44: (1971) 1 S.C.R. 248 : (1971) 1 S.C.J. 730 : A.I.R. 1 S.C.J. 1417.
3. (1977) 1 S.C.R. 1017 : (1976) 4 S.C.C. 622: A.I.R. 1977 S.C. 308.
4. (1979) 1 M.L.J. 421 : 92 L.W. 313: A.I.R. 1980 Mad. 14.

that the Municipal authorities are entitled to assess and estimate the rent which the property may fetch when the property is leased out, in the normal course, what it may reasonably be expected to fetch will vary from case to case. In that case the point of fixation of the standard rent or fair rent under the Rent Control Act was not raised. Anyhow in view of the judgment under discussion the judgment of Ramaprasada Rao, CJ., is no longer good law. There is also another judgment of Justice Ramanujam, in *R.R. Dalavoi v. Government of Tamil Nadu by the Secretary to the Government (R.D.) and (L.A.) Department, Madras*[5]. In that case the learned Judge has laid down under the provisions of the Madras Buildings (Lease and Rent Control) Act, 1960 certain buildings fetching rent above a certain amount are not governed by the provisions of the Rent Control Act and in that case there would not be any restriction as to the rents that could be received in respect of the building. There are certain buildings which have been exempted from the principles of the said Act.

Therefore the fair rent formula contemplated by the Rent Control Act, need not be strictly followed by the assessing authority in respect of such of those buildings which did not come under the purview of the Rent Control Act. In view of what has been laid down by the Supreme Court, the above decision of Justice Ramanujam, seems to be no longer good law.

I would suggest that the Government may make proper amendments in the District Municipalities Act and the Corporation Acts of Madras and Madurai for assessing the annual value of the building under the provisions of the Rent Control Act, in the light of the pronouncement made by the Supreme Court of India.

---

5. (1978) 1 M.L.J. 93 : 91 L.W. 110.

SOCIAL JUSTICE VERSUS NATURAL JUSTICE.

By

A. Ratnavelu, b.a., b.l., *Advocate.*

Social Justice is not an one way traffic leading to a particular sector in a democratic country like India. But it is a leveller to be applied for levelling the ups and downs of society in proportionate manner.

With a view to achieve social justice as enshrined in our Constitution, the State Legislature has enacted debt laws for providing permanent relief to weaker sections of the people in rural and urban areas. The sole object of the debt Acts especially Act XXXI of 1976 and Act XIII of 1980 (as amended by Act XXXV of 1980). is to provide permanent relief to the small farmers, landless labourers and also weaker section of the rural and urban people by way of liquidation of debts, due to acute drought conditions.

According to the provision in the Tamil Nadu Debt Relief Acts of XXXI of 1976 and XIII of 1980 captioned *"Certain debts and liabilities not to be affected"*, the loans lent by the Banks to the same weaker section of society or small farmers are excluded from the benefit of the Acts irrespective of acute drought condition. The question arises, whether the same yardstick as provided for private loans is not to be applicable to the bank loans also in drought condition or whether the drought condition is applicable only to the private loans?

For instance, a debtor (small farmer) in rural areas, borrows ten thousand rupees from a creditor for the improvement of his lands. Similarly the same farmer borrows two thousand rupees from a bank for the same purpose. While being so, according to the Tamil Nadu Debt Relief Acts XXXI of 1976 and XIII of 1980, the small farmer who borrows ten thousand rupees from the creditor is entitled to seek the permanent reliefs as provided in the said Acts for the private loans; but, the very same small farmer who borrows only two thousand rupees from the Bank is not entitled to seek permanent relief for the Bank loans as provided in the said Acts. The very same small farmer is made subject to all legal proceedings initiated by the banks for the recovery of loans. He is bound to pay or he is forced to pay the bank loans irrespective of the drought condition.

Similarly it is very difficult to assimilate the discriminatory concept of the permaent relief as provided in the said Acts in the urban areas. For example, a person, who borrows twenty-five thousand rupees from a creditor, runs a provision store; it may be well-known that he earns more than rupees four thousand and eight hundred out of his provision store. In view of the said Act XIII of 1980, he is not liable to pay the said amount as he is not an Income-tax Assessee or sales-tax assessee. The very same person who borrows three thousand rupees from the Bank is not entitled to seek the permanent relief as provided in the said Act. This is a glaring anomaly in the application of the yardstick of social justice to the bank loans and private loans. The vital point is that the ability to pay or capacity to pay of the small farmer or a member of a weaker section of the society in rural and urban areas is the same both as regards the private loans and Bank loans in drought condition.

While the State Legislature passes such Debt Acts, for implementing the directive principles as enunciated in our Constitution, it must also think over the impact of the said Acts on the people. For example, a small farmer who is in need of money for his son's marriage, or daughter's marriage or urgent medical expenditure, is now not able to borrow money from the creditor immediately in rural areas in view of the said Acts. The Bank is not prepared to give loans to the small farmer for the same purpose without security, moveable or immoveable. So the small farmer is shoved miserably into a sea of troubles. Thus the State Legislature paves the way for the debtors to escape from the moral and legal obligation of paying genuine debts in one aspect and subjects the public to stringent legal measures from another angle. In a nutshell, Government blows hot and cold on the concept of social justice.

According to section 9 of the Tamil Nadu Debt Relief Acts XXXI of 1976 and XIII of 1980, *"No party to any proceeding under this Act shall be entitled to be represented by*

a legal practitioner". The State Legislature poses a conflict between natural justice and social justice in our democratic set up. With a view to achieve social justice as enshrined in our Constitution, the State Legislature prohibits the appearance of legal practitioners for the parties under the said Acts. While the Government seeks to implement the directive principles at the same time it violates the very rudimentary principle of natural justice to every citizen of legal aid. If the Government considers that the appearance of the legal practitioners is a hurdle to social justice, then, it is really countenancing a dangerous proposition to social justice.

According to section 6 of the said Acts, the Government entrusts the judicial function to the Tahsildar to try the mortgage suit (Immovables) for the grant of a certificate of redemption to the debtors. The decision in appeal pronounced by the Revenue Divisional Officer against the order of the Tahsildar in respect of the mortgage suit (immoveables even of high monetary value) is a final one, which cannot be challenged or called in question in any Court. For that, the Government spells out the same explanation that the primary object of entrusting more judicial functions to the bureaucracy regarding the mortgage suit of even high monetary value, is to ensure speedy trial and quick justice to the weaker section of society. This is an alarming move by the Government for scrapping the sound theory of "checks and balances" as incorporated in our Constitution. Under the guise of achieving social justice, the Government entrusts judicial functions to the bureaucracy even at the cost of natural justice.

It is highly deplorable that the Government should deny to the citizen the right to engage an advocate entrusting at the same time more judicial functions to the bureaucracy. Natural justice is just like a root; and the tree is just like a democratic set up. If the pruning (social justice) is applied for the growth of the tree in proper manner, then it is good. But if the (pruning) affects the very root of the tree, then the tree (democracy) will fall.

So, there cannot be social justice without natural justice.

BOOK REVIEW

I. LEGAL CONTROL OF ENVIRONMENTAL POLLUTION by Indian Law Institute, Edited by *S.L. Agarwal.* [Published by N.M. Tripathi Private Ltd., Bombay-2] 1980. Price Rs. 30/.

Man prides himself as the child of light. Advance in knowledge during the last five centuries has been greater than in all previous recorded history. Availing himself of such knowledge he has been busy with changing his environment indiscriminately to make work easier and life more pleasant and comfortable. This, he has achieved at the cost of great danger to environment. Modern civilisation and industrialisation have resulted in a serious imbalance in the ecological and natural environment of the earth, constituting a great health-hazard which eventually may pose a threat to the very existence of humanity. Environmental pollution is a global problem. Though it may not be so serious or acute as in the highly advanced industrial States of the World, in India also the problem has become noticeable. Water technology experts feel that by about 2025 A.D., continued water pollution will leave large parts of the country without water. Currently there is an acrimonious controversy whether the fumes the Mathura Oil Refinery will permanently injure the irreplaceable Taj Mahal. It is therefore time that India faces the problems of pollution from water, air and noise and adopts effective remedial measures. Unlike in the western countries, in India another complicating factor is the population explosion.

The Indian Government is fully alive to the various aspects and problems of pollution menace and their gravity. The Water (Prevention and Control of Pollution) Act, 1974 was enacted to prevent and control water pollution and to maintain the wholesomeness of water. In regard to air pollution, legislation to provide for the prevention, control and abatement of air pollution has been pushed through. The problem of noise control has not yet received Government's serious attention. In India there is no exclusive legislation to control noise pollution. The main sources of noise pollution are industry and construction, traffic noise, air craft noise and sonic booms. According to Dr. Knudsen "noise is a slow agent of death" and "if the noise level we live with today continues to increase at the same rate for the next 30 years as it has for the last 30, it could become lethal. Noise affects sleep, increases tension, impairs hearing and reduces man to a wreck. Legislation on the lines of the Noise Pollution and Abatement Act of 1970 of the U.S.A. and Noise Abatement Act of 1960 of the U.K. has become imperative in this country.

The book under review contains selected papers presented at a Seminar held in New Delhi in May, 1977. Apart from the Introduction, the book consists of four Parts. Part I with 13 papers bears on Water Pollution. Part II with 5 papers deals with Air Pollution. Part III with 3 papers covers Noise Pollution. Part IV presents a summary of the suggestions and Recommendations of the Seminar. The papers come from twenty experts including lawyers. In addition to analysing the existing laws in the developed countries and subjecting them to a critical evaluation, interesting suggestions have been made highlighting the ramifications of environmental pollutions, pinpointing attention to the loopholes, shortcomings and inadequacies of existing laws in our country and indicating what should be done. One of the proposals made is that environmental law should be included in the subjects of study for the law courses. There are scarcely any books on environmental law in India. The present book is therefore bound to be all the more valuable to lawyers, administrators, health authorities as well as the lay public, particularly so in view of the directive in Article 51-A (*g*) of the Constitution. "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures".

II. NEGOTIABLE INSTRUMENTS by *Avtar Singh.* [Published by Eastern Book Company, 34, Lalbagh, Lucknow-226001] 1980. Price Rs. 35/.

Negotiable instruments are essentially the creature of mercantile usage and the law relating to them consists of the general principles governing contracts, and certain special features drawn from usages and customs of merchants judicially noticed and recognised as the law merchant. A negotiable instrument is essentially a chose in action to which is attached special attribute of negotiability by mere delivery of endorsement and delivery. As Eyre, C.B. said long ago "the wit of man cannot devise a thing better calculated for circulation". In England the law relating to negotiable instruments is codified in the Bills

of Exchange Act and in India in the Negotiable Instruments Act, 1881. Two principles are basic and pervade the provisions of the the Act. They are firstly, that negotiable instruments should circulate as freely as money but not on a footing of equality with it, and secondly that the title of a *bona fide* holder for value should be beyond challenge. An American case elucidates the nature of a negotiable instrument thus: "A negotiable instrument is a carrier without luggage. It is a requisite that it be framed in the fewest possible words, and those importing the most certain and precise contract. It must be free from contingencies or conditions that would embarrass it in its course. There should be nothing which would materially impede its circulation".

The instant book is designed to present an integrated study of the subject and is not the usual section-wise commentary on the provisions of the Act. Inasmuch as the Indian Act has in many points adopted a line of its own, though essentially adopting the English model primary importance is given to Indian case law in expounding the principles. The author presents the law under seventeen heads Negotiable Instruments; Holder and holder in due course; Parties; Negotiation; Liability of parties; Presentment; Discharge from liability; Miscellaneous provisions; Noting and Protest; Reasonable time; Compensation; Special Rules of Evidence; Acceptance and payment for Honour and Reference in case of Needs; Payment and Interest; Crossed cheques; Bills in sets and International Law.

The presentation is logical, lucid and analytical. A great merit of the book is that it makes interesting reading from start to finish. It is a welcome addition to the books on the subject.

III. The Drafting of Laws by *G. R. Rajagopaul* (under the auspices of the Indian Law Institute, New Delhi). [Publishers: N.M. Tripathi (P.) Ltd., Bombay] 1980. Price Rs. 50.

Drafting a Parliamentary Bill is not like writing a novel; every word matters and has to stand up to examination in Parliament and the Court. Though Dickens' Mr. Bumble in Oliver Twist declared the law to be an ass, so far as drafting is concerned this is not often the case. Occasionally errors, even fantastic, do occur. In the statute 52 Geo III C. 146, pecuniary penalties imposed under the Act were given half to the informer and half to the poor of the parish. Curiously enough the only penalty imposed by the statute was transportation for 14 years and the draftsman had forgotten all about the pecuniary damage to be distributed half and half as solatium. The result of the draftsman's mistake was that seven years' transportation would have to be given to the informer and seven to the poor of the parish an astounding consequence. This only serves to show the extreme care and concentration the draftsman has to exercise in his task and how onerous the burden is that is cast on him. Thus the drafting of laws acquires great importance for the legal process. As the author very rightly states in the Preface: "the aim of the draftsman as circumstances now exist, should be to surmount all obstacles in his path as best as he can and to ensure that the ultimate legislative product is simple, intelligible, free from pitfalls, is not ambiguous and is sufficiently precise" As is often said: 'The perfect statute has never been written and never will be. Like perfect justice it is only an ideal'. At the same time it should not be such as provoked, Scrutton, L.J. in *Roe* v. *Russell*, (1928) 2 K.B. 117 to observe: "I regret that I cannot order the costs to be paid by the draftsman of the Rent Restriction Acts, and the members of the Legislature who passed them, and are responsible for the obscurity of the Acts".

The instant book deals *inter alia* with the Draftsman and his Equipment; the Structure of an Act; the Legislative process in the enactment of an Act the General Clauses Act, Rules of Interpretation and Subordinate or Delegated legislation. For the guidance of draftsmen, as precedents a number of statutory forms in common use are furnished. The author points out that the object of the Preamble can be served equally well by the long title in almost all cases and that in the United Kingdom, Australia and Canada, Acts do not carry preambles, that in most cases the preamble is a redundancy which can be safely eliminated and that in fact it has been suggested that both the long title and preamble are really old fashioned frills and may be entirely dispensed with (pp. 40, 41, 42).

The book under notice, written as it is by one who has had considerable experience in legislative drafting and legal affairs, is of absorbing

interest. The different facets of the subject are treated analytically, attractively and in depth.

IV. Sorjoo Prasad's ESSENTIAL COMMODITIES ACT with Central Government Orders (Published by Law Publishers, P. B. No. 77, Allahabad.] 4th Edition, 1980. Price Rs. 130.

The Essential Commodities Act, 1955 has stemmed from the need to prevent black-marketing, profiteering and hoarding which are highly anti-social acts often having a strangling effect on the economy of the country and particularly so during a period of natural calamities or national crises. The Act endeavours in the interests of the public for control of production, supply and distribution of trade and commerce in commodities specified in the Act as essential commodities with a view to check inflationary trends in prices and ensure the equitable distribution of such commodities. Changing world conditions in the economic sphere also leave their impact and throw up fresh problems to be tackled. The "winds of change" have been constantly blowing on the law relating to essential commodities and the Act has undergone amendments from time to time. And recently a supplementary legislation also has been enacted, namely, "The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act (VII of 1980)". The main thrust of the latter Act is to strengthen the hands of the State Governments to deal effectively with irregularities in the handling of essential commodities from the time of their manufacture up to the time of sale, protecting at the same time the interests of honest dealers and consumers. Under section 3 of the Essential Commodities Act, the central Government is vested with powers by order to provide for regulating or prohibiting the production, supply, distribution etc., of essential commodities. The Central Control Orders form, as it were, the backbone of the Act.'

The book under notice is divided into two Parts. Part I contains an elaborate commentary on the Act along with the Control Orders made by the Central Government. Part II sets out the Notifications under the various Control Orders. The text of the Prevention of Black Marketing and Maintanance of Supplies of Essential Commodities Act, 1980 is also furnished.

The Essential Commodities Act, 1955 is a high watermark of delegation of legislative power. The constitutional validity of the delegation has been upheld by the Supreme Court in *Narendra Kumar* v *Union of India*, 1960 S.C. 430. A large amount of case law has gathered about the provisions of the Act. English decisions have also been used to illumine dark corners. The instant book has considered the case law up to date. The gathering of the notifications is an immense task satisfactorily accomplished. The book will be highly useful to the legal profession, the judiciary, and the general public and serve as a "self-contained encyclopeadic work on the law relating to essential commodities in India."

V. DOMESTIC ENQUIRY BY *Markanday Katju*. Second Edition. [Published by N.M. Tripathi Private Limited, Bombay.] 1980. Price Rs. 50.

Domestic enquiry is an important subject in industrial law and concerns industrial employees. While non-industrial employees such as domestic servants, are liable to be discharged at any time and the principle of "hire and fire" applies to their cases, so far as industrial employees are concerned, the employer must hold an enquiry by an unbiased person giving the accused person full opportunity for a personal hearing to enable him to put up a defence. He should be allowed to cross-examine the witnesses for the employer and examine his own. The enquiry officer should give his findings based on the evidence and state the reasons for his findings. It is only thereafter that action can be taken against him by the employer for his alleged misconduct. Failure to observe these norms will vitiate the punishment and it is liable to be set aside by the Tribunal. Labour law is rapidly changing and often baffling. There are practically no statutory provisions governing domestic enquiries. The law is almost entirely Judge-made. The principles governing a domestic enquiry are not always crystallised. As the author points out in his Preface while in the *Cooper Engineering Ltd.* v. *Mundhe*, A.I.R. 19:5 S.C. 1960 the Supreme Court indicated that where an enquiry is found defective the Tribunal should provide an opportunity to the management to justify its action even if it may not have filed any application seeking such opportunity, in *Chakravarty* v. *Britannia Biscuit Co. Ltd.*, A.I.R. 1979 S.C. 1652 the Court has held that the management must apply for such opportunity. Domestic Tribunal may include the committees or the councils or, the

the members of trade unions, of members' clubs and of professional bodies established by statute. There are wide differences between the principles applicable to Courts of justice and those applicable to domestic enquiries. For instance the Evidence Act has no application to the Tribunals. All that the law requires is that the Tribunals should conform to the principles of natural justice.

The book under review consists of eight Parts Part I provides an Introduction. Part II covers the procedure of conducting a domestic enquiry; Part III deals with the Rules of Natural Justice and Part IV with Misconduct. Part V discusses punishments and Part VI the Tribunal's Jurisdiction to Interfere. Part VII deals with Proceedings under section 33 of the Industrial Disputes Act and part VIII furnishes Models of Documents. The text of the Industrial Disputes Act, is given as an Appendix. The author's treatment of the subject is lucid and comprehensive. The citation of case-law is judicious and up to date. The book is bound to be of great help and utility to lawyers, students of labour law and labour welfare, trade union officials and employer's of labour.

VI. READY REFERENCER ON FORGERY, CHEATING, CRIMINAL MISAPPROPRIATION AND COUNTERFEITING by *Krishnama Charlu* [Published by the Western Law House, Ahmedabad] First Edition, 1980. Price Rs. 45.

There is no gainsaying that with population explosion and complex social and economic forces operating in our midst today, society is witnessing in an increasing degree various manifestations of degenerate human conduct and perverted ways of life. Cheating, criminal misappropriation and forgery are resorted to on a large scale. The substantive law relating to these offences is the Indian Penal Code and the procedural law is contained in the Criminal Procedure Code. Various terms are used which are not easily understood. An endeavour has been made to collect together some of the commonly occurrng legal terms which bear on the main subjects. A mass of case law has to be waded through, not infrequently, to get at a point. The book under notice according to its author is intended to serve as a compact and reliable guide, a sort of dictionary or ready reference, to lift the load off the routine of the lawyer's day. The matter bearing on the concerned offences is arranged in strict alphabetical-order and the law is stated referring to statutory provisions and case law. The exposition is simple and lucid and the citation of case law is part and up to date. To practitioners of Criminal law the book will serve as a useful guide.

VII. THE PRINCIPLES OF THE LAW OF TRANSFER by *S.M. Shah*. Fifth Edition 1980 [Published by N.M. Tripathi Private Ltd. Bombay] PriceRs. 35.

The law relating to transfers of property *inter vivos* was enacted as the Transfer of Property Act, 1882. Since then the Act has undergone numerous amendments, the major amendment being of the year 1929. *Ex hypothesi* the Act does not apply to transfers by operation of law which occur in cases of intestate and testamentary succession, forfeiture, insolvency and Court sales. The Act has no application to disposal of property by will. The Act has not yet been extended to the Punjab and the Pepsu areas, though it was extended in 1962 to the Union Territory of Delhi. Even in such areas the principles found in the Act may be applied as rules of justice, equity and good conscience. Section 2 of the Act, exempts *inter alia* any rule of Mahomedan Law so far as the second chapter of the Act is concerned. The provisions of the Act, not always happily expressed, have given rise to a considerable amount of case law. Further, by reason of their association with doctrines peculiar to English law some of the provisions of the Act have become too technical to be easily comprehended.

The book under review presents the subject in the form of lectures to facilitate a systematic study of its provisions and to make understanding easier. The lectures occupy 11 chapters captioned respectively; Introductory; Essentials of a valid transfer; Conditional transfers etc.; Doctrine of Notice and Unconscionable Transfers of Immovable Property; Special cases of Immovable Property; Priority and Lis Pendens; Sales of Immovable Property; Mortgages of Immovable Property; Rights and Liabilities of the mortgagor; Rights and Liabilities of the Mortgagee and Charges; Leases of Immovable Property; Exchange, Gifts and Assignments of Actionable Claims. The presentation is analytical and impressives. At page 28 the statement that a transfer by a

de facto guardian of a minor is void unless it is made under Hindu law for legal necessity has to be completed by adding that after the enactment of the Hindu Minority and Guardianship Act of 1956, under section 11 thereof a *de facto*, guardian's alienation of the minor's property even for legal necessity will be totally void. [*Ayyappan* v. *Anthony*, 1978 Ker. L. J. 531] The author's suggestion at page 100: "..........the clause in section 3 of the Act stating that actual possession shall operate as constructive notice of the interest of the party in such possession stands in need of being amended by addition of a proviso that where the party in possession is a tenant, the possession shall be deemed also to operate as constructive notice of the lessor's interest in the property. If such amendment is made, the proviso to section 53-A may even be unnecessary" is a useful one and generally acceptable. All important decisions up to March, 1980 have been taken into consideration. Though primarily meant for students, the book will be of value to lawyers as well.

VIII. Interpretation of Statutes by *Vepa P. Sarathi*, Second Edition, 1981. [Published by Eastern Book Co., 34, Lal Bagh, Lucknow-226001.] Price Rs. 80.

The problem of interpretation is an exasperating one. It stems from the intricacies of language. In the words of Alexander Hamilton "when the Almighty himself condescends to address mankind in their own language. His meaning, 'luminous as it must be', is rendered dim by the cloudy medium through which it is communicated". Statutes are the formal expression of the legislative will and their exposition by Courts of law constitutes the body of statute law. Viscount Simon L. C. in (1940) 3 All E.R. 549 observed that in interpreting statutes "the golden rule is that the words of a statute must *prima facie* be given their ordinary meaning." Rules of interpretation come in to avoid serious differences of opinion in getting at the meaning of a statute. According to the author the rules now applied in this behalf are not satisfactory inasmuch as instead of emphasising the *object* of the legislature the attempt is to ascertain the *intention* of the legislature straightaway. He feels that once the *object* is defined one can easily find out *how* the legislature intended to achieve that object. The rules of interpretation should be to find out the object of the enactment and then, language permitting, choose that interpretation which achieves the object [p. 12]. For this purpose Courts should make free use of *travaux preparatoires*. The author formulates in accordance with the approach advocated by him 10 rules of interpretation. He is quite alive to the fact that even after formulation of precise and clear rules, in actual experience the rules often afford justification for different interpretations.

Apropos Article 368 of the Constitution, according to the author: The scope of the power of amending the Constitution which Parliament has, may thus be stated as follows, and if this view is accepted, there will never be any conflict between the Courts and the legislature and these two great departments of the State will be able to guide the executive to act always for the good of the people: (*a*) The power of Parliament to amend the Constitution is absolute and there are no limits on that power. (*b*) Parliament should not however take away the power of Courts to strike down ordinary legislation as tested against the amended Constitution. [Ch. XII, p. 466.] The statement is attractive and simple but is apt to be controversial due to the political overtones implicit in the problem.

Apart from discarding the pedestrian approach and maintaining an objective assessment, the author's treatment of the subject makes the book eminently readable. Giving extracts from judgments of the Privy Council instead of quotations from English decisions is consistent with the need for the judicial approach to be Indian. Whether one agrees with all the views of the author or not, it is indisputable that the work is marked by original thinking and approach which is at the same time complete and practical. By all standards the present publication is an important and significant contribution to the subject. The second edition fully maintains the high quality of the first edition.

IX. Hindu Marriage Act by *Dr. Tahir Mahmood*, 1980 [Published by Law Book Company, Sardar Patel Marg, Allahabad.] Price Deluxe Rs. 45; U. K. £ 4; U. S. $ 11. Paperback Rs. 35; U K. £ 3; U. S. $ 8.

No institution of the Hindus has undergone over the years such revolutionary changes as the law relating to marriage. Originally a

samskara having for its object *praja, rati* and *dharmasampatti*, it has now become practiclly a secular and fragile institution though leavened with a vencer of sacredness by insistence on performance of customary ceremonies of either of the parties to it. The process of attrition of the sastraic law started with the passing of the Hindu Widows Remarriage Act, 1856 and culminated a century later with the enactment of the Hindu Marriage Act, 1955. One can easily accept the assessment of the author of the book under notice that "it is the advocates of legal modernism who have so far succeeded in influencing the law-maker [Introduction, p. 21].

The Act consists of 30 sections, Apart from providing a detailed a section-wise commentary on the provisions of the Act, the author has furnished in the Introduction the historical background of the Act the development of the law since the enactment of the Act, and the approach in the Special Marriage Act, 1954 *vis-a-vis* the concerned matters. There are three sets of appendices, the first, giving the rules framed by the different State Governments relating to the registration of Hindu Marriages; the second, furnishing the rules under the Act framed by the different High Courts; and the third containing the legislative enactments or relevant extracts therefrom as are explanatory or supplementary to the Hindu Marriage Act. Case law has been fully taken into account.

At pages 5 and 201 the term 'pravara' is stated to mean three immediate paternal ancestory of the founder of one's gotra. It would be more accurate to regard it as signifying the distinguished sages of the same clan, a sort of ritual bio-data or identifying criteria of a devout Hindu. On the question of anticipatory prohibition of violation of any of the conditions in section 5 of the Act, though Judicial opinion is not uniform, the author's view that it should be permissible under the provisions of the Civil Procedure Code and section 54 of the Specific Relief Act will be generally accepted. In the discussions under section 13 (1-A) the decision in *Soundarammal* v. *Sundara Mahalinga Nadar* (1980) 2 M. L. J. 121: A.I.R. 1980 Mad. 294, holding that where a husband's 'wrong' originating before the relief which forms the foundation for a petition under section 13 (1-A) continued during that year so that resumption of cohabitation is precluded by his action he could not avail of the relief as the first stage of divorce in his own interest, has not been noticed presumably because that decision had not been reported by the time the book went to the Press.

The instant book is marked by meticulous analysis and scholarly study of the subject. It constitutes a luminous exposition of the provisions of the Hindu Marriage Act.

X. ADMINISTRATIVE LAW by *I. P. Massey*. [Published by Eastern Book Company, 34 Lal Bagh, Lucknow—226001] 1980. Price Rs. 40 (Hardbound); Rs. 30 (Paperback).

Although administration is largely executive in its essential slant yet in the modern context due to its impact on the rights and liberties of citizens. it has become imbued with legalism and acquired many judicial and legal attributes. The administrative process has become so immense at the present time particularly in welfare States that it is difficult to frame a satisfactory definition of administrative law as would cover the whole spectrum of the administrative process. It is, like the elephant, as Lord Cairns said, more to be described than defined. Administrative law is still an amorphous subject. Broadly speaking it consists of those legal rules which have as their object the fulfilment of public law. Its aim is to reduce and diminish arbitrariness in the exercise of public or Governmental power. It stems from the concept of rule of law and is wholly judge-made law.

The book under notice reviews the subject of administrative law in 10 chapters. Chapter 1 is an Introduction. Chapter 2 mentions the conceptual objections against the growth of administrative law; Chapter 3 deals with the anatomy of administrative action; Chapter 4 discusses Rule-making power of the administration and Chapter 5 the decision-making power of the administration. Chapter 6 is devoted to practice and procedure of administrative decision-making: Rules of natural justice. Chapter 7 considers Judicial Review of Administrative action, and Chapter 8 the Liability of the Administration. Chapter 9 deals with statutory and non-statutory public undertakings, while Chapter 10 covers the citizen and the administrative faults. There are seven appendices setting out respectively the American Administrative Procedure Act, 1946; the Federal Tort Claims Act. the Tribunals and Inquiries Act, 1958, the Crown Proceedings

Act, 1947. the Statutory Instruments Act, 1946, the Freedom of Information Act; and the Lokpal Bill.

The author formulates administrative law as "that branch of public law which deals with the organisation and powers of administrative and quasi-administrative agencies and prescribes principles and rules by which an official action is reached and reviewed in relation to individual liberty and freedom." Apart from generalising that the principles and norms of action flow from conceptualisation of "a rule of law society" and must conform to the substance of natural law principles it has to be conceded that they represent in the main a balancing of notions of fairness and efficiency. The author gets at the crux of the matter in his discussion of Judicial Review of Administrative Action, when he states: "The trend of the Indian Courts to take shelter behind technicalities of law make the growth of law stultifying. The primary purpose of the jurisdiction of the High Courts as laid down in Article 266 (1) is to protect the 'little man' from any injury of a substantial nature or substantial failure of justice besides enforcing the fundamental rights. Therefore, *instead of being obsessed with the status of 'person or authority' the Court must exercise its power for the protection of the 'little man.'*" (p. 181) (italics subplied). As the author justly observes "the essential purpose of public law review is not so much the enforcement of rights as the control of administrative action." It is gratifying that the book reveals many such insights. The book summarises all the aspects of administrative law and also indicates lines of further study. The author states in the preface "my purpose is expository and my objective is clarity." Actually he has given us much more. The book is stimulating throughout.

XI. Rent Control Reporter Digest, 1969 to 1977 by *O. P. Tiwari.* [Published by Seven Stars Publications (India), New Delhi, 110034.] 1980 Edition. Price Rs. 130.

Growing industrialisation and population explosion have led to acute accommodation shortage and rack-renting legislation to check these evils has been undertaken in all the states. Rent Control Acts have been enacted all over India. They have given rise to various types of problems of construction and applicability of their provisions to an infinite variety of situations. The Acts become "prolific parents of litigation." The number of decisions rendered is legion. Journals exclusively interested in reporting Rent Act decisions have come to function.

The present publication centres round All India Rent Control Reporter, All India Reporter, All India Rent Control Journal and All India Rent Law Reporter. The author's preface states that the Digest is mainly based on the Rent Control Reporter, references and rulings from R. C. J. R.L.R. and A.I.R. also having been given at appropriate places. Other Journals do not find mention. It is not quite clear what the statement: The complete equivalent references will, however be found in the comparative cases Index appearing at the end of the last volume etc." seeks to convey.

The topics in the Digest are arranged alphabetically, but in their headings and sub-headings they are given subject-wise generally. The headnotes of cases are "concised" in the author's language. The instant digest is pre-eminently a labour-saving device. With a minimum effort the busy practitioner can locate under the relevant heading the Assistance he seeks. The instant Digest covers the period 1969 to 1977. It will be a welcome addition to the lawyers armoury.

XII. "Caste Reservation in India: Law and the Constitution" by *G. P. Verma.* [Published by Chugh Publications, 2, Strachey Road, Allahabad.] 1980. Price Rs. 50.

"All men are equal" is an attractive adage. It cannot however postulate universal equality. As Shakespeare said: "The heavens themselves, the planets and this centre: Observe priority degree and place". All that it postulates is universal brotherhood and that in judging a man place or status, his nativity, descent, religion race or caste labels should have no relevance or significance. The Pre-amble to the Constitution lays stress on equality of status and of opportunity and Justice, social, economic and political. Realising that the weaker sections of the community required special provisions to enable them to come up to the level of the forward sections of the society, the Constitution has *inter alia* provided for special reservations for the backward segments in matters of public employment. Backwardness has in India, be-

come institutionalised as a result of the caste system. Not only has backwardness been spelt to mean social backwardness and not economic backwardness but it has also allowed the growth of vested interests in backwardness. For some time now the problems arising out of the reservation have taken an agitational and disquieting turn in many parts of the country and charges have been made that under the guise of protection for the weaker sections the advancement of the rest of the society has been totally ignored. There are practically no books which have made a study in depth of this subject. The instant book comes as it were as a pioneer's job.

The book is divided into seven chapters. The first chapter examines the constitutional framework with particular reference to equality of opportunity in matters of public employment. Chapter two discusses, identification of backwardness. Chapter three concerns itself with the efforts of various State Commissions. Chapter four addresses itself to the judicial endeavour in tackling the various off-shoots and tests of identification of backwardness. Chapter five deals with the quantum of reservation. Chapter six is devoted to the evils of casteism and chapter seven suggests some measures for immediate implementation to streamline the reservation policy at the same time striking a balance between the juxtaposed rights, that of the weaker sections for special treatment and that of the other sections based on merit. Incidentally the author explains the concept of reverse discrimination considered in the U. S. Supreme Court decision in *University of California* v. *Bakke*, dated 28th June, 1978.

The assesments of the author that backwardness is not the problem of the lower caste only (p. 117); the framers of our Constitution apparently failed to foresee and comprehend that the system of job-reservation would be exploited by the political leaders for their political reasons and it would take an eternal shape' (p. 128): once a caste is accepted as a backward class there is no formula for declassifying it' (p. 132) etc., are indisputable. The author has no panacea or ready made solution to the problems arising out of caste reservation but he has made valuable suggestions to streamline the reservation policy: (1) The basis of reservation might be caste coupled with some economic criteria, but not caste alone or poverty alone. (2) Reservation should be only for those sections who have economic, educational, social and environmental handicaps, to the under-developed or developing groups, (3) Backwardness should be determined on data collected after full investigation with a time-bound programme to bring the backward sections at par with others. (4) The quota of reservations should be within reasonable and sensible limits (5) Reservation should not go on indefinitely and a time-limit should be fixed. (6) Wards of Cabinet Ministers, Members of Parliament and the legislatures, Class I and Class II officers, civil servants. highly placed executive officials in banks, nationalised undertakings or companies, those paying income-tax or are otherwise well off, businessmen, engineers, doctors and those owning land, tractors and tubewells etc. irrespective of their caste or community should not have the benefit of reservation. (7) The State should not act on the assumption "once backward always backward" etc.

The author's treatment of the subject is objective and balanced; realistic and perspicacious, luminous and thought provoking.

XIII. MOTOR ACCIDENT COMPENSATION by *A. S. Bhatnagar*. [P.S.S. Publications, Hanuman Road, P.O. Shamli (U.P.) 247776.] First Edition, 1980. Price Rs. 40.

Fast moving vehicular traffic is the order of the day. Thousands of automobile accidents occur resulting in the deaths of a large number of persons annually or in serious injuries to them. The causes of such accidents are multifarious. The Indian highways are among the top killers in the country and the law seems to be dead in this milieu. Compensation to the victims should they survive or to the members of the family for the loss or incapacitating of the breadwinner, actual or potential, is more than a legal problem; it is a human problem. Ignorance of law and non-familiarity with the procedure to be followed constitute an additional handicap to the concerned persons. The instant book is designed to explain how to claim, contest and assess motor accident compensation. Till the enactment of sections 110 to 110-F of the Motor Vehicles Act by the Motor Vehicles Amendment Act C of 1956 all claims relating to fatal motor accidents were governed by the Fatal Accidents Act of 1855 and had to be brought only in civil courts. This tortuous remedy has given place to a cheap and expeditious remedy by resort to the Motor Accident Claims Tribunal set up under the

1956 Act by the injured persons or their legal representatives as the case may be. Where the claim includes a claim for compensation in respect of damage to property exceeding Rs. 2,000 the civil Court and the Claims Tribunal have concurrent jurisdiction and the claimant has an option to choose the forum.

The book under notice consists of 15 Chapters. Chapter 1 traces the evolution of the law relating to compensation in respect of accidents involving motor vehicles. Chapter 2 states who can claim compensation and Chapter 3 how to claim. Chapter 4 states where to file the claim; Chapter 5 deals with inquiry into application for compensation and Chapter 6 discusses negligence. Chapter 7 is devoted to insurance against third party risks and Chapter 8 considers the liability of the insurer, owner and driver. The vicarious liability of the state is dealt with in Chapter 9. How to assess compensation is explained in Chapter 10. Chapters 12 to 14 deal respectively with Appeal, Revision and Recovery of money due under an award. Chapter 15 is concerned with the power to make rules under the Act. The Central Government is empowered by section 111 to make Rules for the purpose of carrying into effect the provisions of Chapter VIII of the Motor Vehicles Act and section 111-A gives power to the State Government to frame rules for carrying into effect the provisions of sections 110 to 110-E. Case-law up to March, 1980 has been taken into account in the exposition by the author. The Form of application for claiming compensation prescribed in the different States of the country is set out in an Appendix.

While the author has referred to deduction for share in joint family property left by the deceased in determining compensation, he could have also discussed the propriety of taking into account property which claimants may inherit on the death of the deceased while determining the loss of pecuniary benefit arising out of the death of the deceased. If that was justifiable, it would mean that where a man having considerable properties and other assets dies, the tortfeasor may not be liable to pay any compensation to the heirs of the deceased while there will be such liability if the deceased had died without substantial means. The book on the whole contains a neat and helpful presentation of the principles and will prove to be of general interest to one and all.

———

XIV. THE PREVENTION OF FOOD ADULTERATION ACT WITH RULES (CENTRAL AND STATES by *H. L. Capoor* and *D. D. Seth.* [Published by Law Publishers Sardar Patel Marg, Allahabad-211001.] 1st Edition, 1980, Price Rs. 110.

In his craze for making money man often adopts unworthy means. Adulteration of food stuffs is one of the most despicable means resorted to. It is not only a menace to public health but an unpardonable crime against humanity. Since its enactment in 1954, the Prevention of Food Adulteration Act has been amended many times to plug loopholes and to make its provisions more effective in controlling the evils of food adulteration. With the advancement of science and technology everything ranging from beverages, foods and food stuffs to medicines and life-preservatives, packed and issued through sophisticated processes from the manufactory to the consumer at different stages have become prone to adulteration, so much so, joint trial of manufacturers, distributors and retail-sellers are now held. The Amendment Act of 1976 inserted sections 16-A and 16-B in the principal Act providing for deterrent punishments like life inprisonment, and under section 17, in the case of a company, not only an individual nominated by the company can be held liable for adulteration but even the directors, managers, secretaries and other office-bearers are made responsible and liable to punishment in certain cases. Under sertion 23, the Central Government can make rules; likewise under section 22-A the Central Government can give directions to State Governments implement the scheme of the Act and in accordance therewith the latter may frame their own rules. The collection of all these materials and expounding the provisions of the Act taking into account proliferating case-law has become an immense business.

The instant book provides commentaries on the provisions of the Act brought up to date in the light of the judicial decisions. The Rules framed under the Act are also given with 20 Appendices. The presentation of the subject is exhaustive. Though a considerable number of decisions have been cited, some, which deserve inclusion seem to have been passed over such as *Rajan* v. *State of Kerala*, 1979 Ker. L.T. 658, holding that where the prosecution succeeds in showing that the accused sold adulterated articleof food, it need not further establish that the article was harmful to the health of the

person consuming it; and *Ram Chandra* v. *State of Rajasthan*, 1979 Cr. L.J. 419, indicating the present day approach to the question of sentence—'This crime (adulteration of milk) is very seldom detected, because it is practised unnoticed and a large majority of such adulterations remain undetected. If the Courts show unwarranted and wholly misplaced mercy for giving any benefit to these culprits who commit the crime mercilessly and ruthlessly by repeating it the Courts are guilty of indiscreet and unintended abetment of such social crime might have been cited. All in all, the book gives a complete treatment of the subject in all its aspects and phases. The book should prove useful to the bench and the bar, the departmental authorities and to those who have anything to do with the subject.

———

XV. ENGLISH LAW AND FRENCH LAW by *Rene David*. [Publishers: Stevens and Sons. London; Eastern Law House, Calcutta] 1980.

The book is a comparison in substance of English and French Law. It contains the Tagore Law Lectures delivered under the auspices of the Calcutta University. The comparison is made under eleven titles: (1) A Law of Remedies and a Law of Rights. (2) Codified Law and Case Law. (3) Structure and Divisions of the Law. (4) Courts and Lawyers. (5) Procedure and Evidence. (6) Constitutional Law. (7) Administrative Law. (8) Law of Contract. (9) Mercantile Law. (10) Law of Torts. (11) Labour Law.

Common law and civil law, *i.e.*, the English and the French systems of law have provided the models for practically all the countries of the world. Despite the geographical propinquity between the countries English Common Law and equity have developed separately from the civil law of the continent. It is only in recent times that specialised studies have been undertaken in regard to the development of these systems in their comparative aspect.

According to Prof. Rene David, the divorce between the English and Continental systems of law was not deliberate but was due to differences in the matter of administration of justice. Arising out of the assurances of the Norman Conquerors to be respectful of ancient customs and allow the continuance of the County Courts, resort to the Royal Courts was possible in exceptional cases only and there was also the need to obtain a writ from the Chancellor and to keep within the framework of forms of action. Though the early customs and customary Courts fell gradually into decay the common law principles recognised by the Royal Courts could emerge only through individual cases and subject to the suffocating procedural constraints. The law developed as case law; remedies precede; rights was the basic axiom of the common law. The evolution on the continent was altogether different; justice was administered on the basis of reason. Procedure was reshaped with the adoption of a new law of evidence based on a system of rational proof. Procedure was regarded as being no more than a servant of the law. The law represented a model body of rules independent of the procedure followed and of the decisions made by the Courts. In sum, according to Prof. Rene David, the English Common Law has arisen as a bunch of devices having the practical purpose of bringing controversies to an end whereas the civil law has presented itself as a system teaching which rights and duties ought to be recognised in society according to an ideal of justice. Though forms of action were abolished in England in 1852 and since then English lawyers have shifted increasingly from the technicalities of procedure to the consideration of substantive law, Prof. Rene David cites Maitland's dictum: "We have buried the forms of action, but they still rule us from their graves". Common law has developed as case-law where no legal rule can exceed what is necessary for adjudication of a cases; it is an "open system" the evolution of which proceeds through a technique of distinction; civil law on the other hand has regarded cases as no more than opportunities for Judges to apply the rules proposed by legal science and adopted the technique of interpretation of the rule. As with theatrical plays, literary works and music so also in the case of a statute the text may remain the same, but it may be charged with a new meaning and subject to a new interpretation in the setting of the society: Prof. David's view, that in a welfare State where the law will be used to work out a revolution in society, the continental concept of a legal rule has to be accepted will find general agreement.

Prof. David observes in the Introduction "My purpose is to consider a variety of branches of the law and to investigate in such

branches what is, in England and in France the present state of the law and which differences are to be noted there between the two systems; and it is also to consider what is the prospect of seeir g the oppositions of older times being attenuated or disappear in a world where international relations call for more uniformity than ever". The questions posed whether these systems have outgrown their need to retain their entities and whether it would be wise to adopt one or other system or resort to adaptation of them both to work out justice in modern society are very pertinent and thought provoking. The instant book is a scholarly presentation and a useful addition to books on Comparative Law.

———

XVI. *B B. Mitra* on the Guardians and Wards Act, 1890. Twelfth Edition. [Published by Eastern Law House, Calcutta.] 1980 Price Rs. 80/ *J* 8: $ 16.

The general theory of the sovereign's duty to protect his subjects involves the recognition of a residuary jurisdiction in him to take care of their property and welfare. Kalidasa referred to this duty in the Sakuntalam when he said of Dushyanta: Whichever dear relative a subject hapened to lose King Dushyanta will fill that person's place except where it will be sinful to do so". Guardianship over minors was thus part of the sovereign's duty to his subjects and the institution was well known to the Hindus from early times. The joint family system being the normal condition among Hindus the manager or karta was charged with the responsibility, control and care over infants and matters relating to them were to be regarded not so much as a matter of right vested in particular persons but more as a question of the welfare of the minors. One of the recent decisions emphasising this principle is *Rosy Jacob* v. *Jacob A. Chakramakkal*, 1973 S.C. 2090. The Guardians and Wards Act, 1890 states the principles relating to the appointment and declaration of guardians as well as their powers and duties.

The instant book provides commentaries on the provisions of the Act. The gradual development of the legal concept of guardianship is traced in a separate chapter adverting to Hindu law, Roman law, English law the law in the U.S.A. and 'Mohamedan' law. In Appendix A the Rules framed by the High Courts of Bombay, Calcutta, Madras, Patna, Punjab, Mysore are given as well as the provisions of related Acts like the Indan Majority Act, the Hindu Minority and Guardianship Act and the West Bengal Children Act, 1959. Appendix B furnishes variouss specimen forms. Case law, English and Indian has been taken into account in the annotations on the provisions of the Act.

The statement at page 1 that during the Vedic age the wife was given a position of near subjugation under the husband and in the Rig Veda there are instances of her being treated as near chattel is debatable in view of the description in the 10th Mandala of the wife as the Queen of the house. At page 10 it is stated that section 5 (*iii*) of the Hindu Marriage Act enjoins that for the purpose of the solemnisation of a a Hindu marriage the bridegroom must complete the age of 18 years and the bride the age of 15 at the time of the marriage. This has missed the fact that the ages have been raised to 21 years and 18 years respectively by the Child Marriage Restraint (Amendment) Act II of 1978. At page 15 it is observed that the order of preference of relations of a Hindu minor to give consent to marriage has been indicated in section 6 of the Hindu Marriage Act. The observation has failed to note that the section has been omitted by the Child Marriage Restraint (Amendment) Act, 1978, section 6 and schedule. At page 45 it is stated that "section 11 of the Hindu Minority and Guardianship Act, 1956, enacted in express terms that after the commencement of the said Act no person other than the *de facto* guardian has the right or authority to do any act in disposing of or dealing with the property of a Hindu minor." Obviously the term "*de facto* guardian" in the statement should be "*de jure* guardian". Unless corrected the statement as it stands will be wrong and misleading. There is no point either in referring to the decisions on the powers of a *de facto* guardian under Hindu law, twenty-five years after the enactment of section 11 precluding his dealing with a minor's property, the inhibition extending also to a minor's undivided interest in joint family according to recent decisions. Again there seems to be no reference to the decision in *Om Parkash* v. *Child Welfare Board*, 1980 Del. 137, holding that an application under section 10 of the G. and W, Act will not be competent against a statutory body such as the Child Welfare Board created under the Children Act and that there can be no claim or right to

the custody of a child committed to its oster care. These apart, it is to be noted that the instant book furnishes detailed discussion on various topics involving the rights, duties, liabilities and obligations of the guardians *vis-a-vis* his wards. The book should serve as a useful guide on the subject.

— — —

XVII. NANDI'S CIVIL READY REFERENCER, Second Edition, 1980. [Published by Eastern Law House, Calcutta.] Price Paperback Rs. 132; Casebound Rs. 180.

Case law explosion comprising a vast filed sets the lawyer a laborious and time-consuming task to find the decision that he wants. With the passing of years no doubt many decisions become obsolete but more decisions introducing refinements and nice distinctions also crop up. A ready reference work in such circumstances will prove a desideratum. The instant book is designed to serve the need. It has made a fairly exhaustive collection of notable judicial precedents under as many as thirty-eight titles of Civil and Constitutional laws with an up-to-date coverage. It contains among others the following titles: Accident Claims (Motor Vehicles and Railways) Accounts; Administration; Adverse Possession; Carriers; Civil Procedure Code; Constitution of India; Construction of Documents; Contract; Domestic Tribunal; Evidence; Family Arrangement; Hindu Law; Insolvency; Mahomedan law; Marriage and Divorce; Partnership; Specific Relief; Transfer of Property; Sale of Goods; Trusts etc.

The enunciations are pointed and crisp. One or two matters require revision. At page 498 it is stated that where a Hindu widow obtains by compromise a life-estate in lieu of a money decree for maintenance with a charge on property, the case falls under section 14 (2) of the Hindu Succession Act, citing A. I. R. 1969 A. P. 300. But this decision has been overruled in 1977 S. C. 1944. Likewise at page 499 the reference to A.I.R. 1972 Mad. 276 can no longer hold good in view of the Supreme Court decision overruling it in A. I. R. 1977 S. C. 2824. In regard to age of marriage under the Hindu Marriage Act, it is stated at page 710 "Marriage of bridegroom below 18 years and bride below 15 years is void *ab initio* citing A. I. R. 1975 A. P. 193. But this decision has been overruled in A. I. R. 1977 A. P. 43 (F. B.), which itself has been referred to immediately above the concerned statement to lay down the contrary position. Reference to overruled cases is likely to cause confusion and may be avoided.

The book is the result of prodigious labour and bears the imprint of scholarship and industry.

— — —

XVIII. B. B. MITRA ON THE LIMITATION ACT, Eighteenth Edition by *A. C. Sen*. 1980. [Published by Eastern Law House, Calcutta.] Price Rs. 148: £ 15: $ 30.

Though a statute of limitation is, in the words of Lord Kenyon, a statute of repose yet it does not ordinarily preclude a person from litagating a matter, before the Court or from bringing up a matter for the formal decision of a Court. Limitation, therefore, cannot affect a Court's Jurisdiction but merely regulates the time within which a Court's powers are to be invoked and hence it does not take away any powers of the Court either. Again a new law of limitation providing a longer period cannot revive a dead remedy, nor can it suddenly extinguish a vested right of action by providing a shorter period of limitation. [*New India Insurance Co. Ltd.* v. *Shanti Misra*, 1976 S. C. 237]. The Limitation Act of 1963 which currently provides the law of limitation has been in force for about 18 years and interpretation of its provisions has given rise to a mass of case law; Many books have been written commenting on the law of limitation. The instant book is one of them. A good book on the Limitation Act is a *sine qua non* for a practising lawyer.

Four tables have been provided in the present work at the commencement showing how the sections and articles of the Limitation Act of 1963 correspond with those of the 1908 Act and *vice versa*. An up-to-date text of the 1963 Act is also given.

Inasmuch as a commentary is not a mere digest of case law, the decisions have been carefully screened and only those as are likely to help a practising lawyer have been included, full weight being accorded to the Supreme Court decisions. The commentaries give a lucid exposition of the legal principles. The subject index is methodical and shows a high degree of precision. The book can justly be regarded as a standard book on the subject of limitation.

— — —

XIX. N. D. Basu's Law of Injunctions, Forth Edition by *S. K. Bose*. [Published by Eastern Law House Private Limited Calcutta-700013]. 1980. Price Rs. 80£ 8: $. 17.

Injunction is a most valuable and important judicial process whereby a party is ordered to refrain from doing or to do a particular thing. The former is restrictive and the latter mandatory. It is the only judicial instrumentality for the prevention of wrong. It is an equitable remedy whose origin goes back to the "interdicts" of Roman Law. The principal function of an injunction, is to furnish preventive relief against irremediable mischief or injury. In India the law as to injunction is contained in the Specific Relief Act and the Code of Civil Procedure. Injunctive relief has developed considerably but the law even today remains the same in regard to the principles controlling the grant of injunctive reliefs.

The book under review consists of 34 Chapters of which the first five are of an introductory character. Chapter 33 deals with practice and procedure. Chapter 34 incorporating separately the statutory provisions relating to injunction is an addition in the present edition. The intervening chapters are devoted to injunction in relation to the different classifications of obligations arising out of trust, contract and torts. Injunction is a discretionary relief and therefore much case law has developed round the award of the relief. The author has quoted profusely not merely from the early standard books but also from judicial decisions, both English and Indian. The book under review contains a thorough and exhaustive study of the subject analytically, and in depth. The present edition has fully maintained the level of the previous editions.

XX. Majumder on Plaints by *Ajit Majumder*. Second Edition, 1980. [Published by Eastern Law House, Calcutta.] Price Rs. 118:£ 10:$ 20.

The pleadings ascertain precisely the points of contention of parties. The terms 'plaint and complaint, though synonymous and involving the element of lamentation and melancholy have in practice come to be associated, the former with moving the civil Court for relief and the latter with a criminal Court. The plaint is the document by the presentation of which a suit is instituted and the averments in which, form the basis for any relief. A plaint will be rejected if it does not disclose a cause of action or is undervalued or is barred by any law. Plaint has therefore to be very carefully prepared; likewise the written statement.

Though the book under review was first published as plaints and complaints volume I (Civil), it is named in the current edition as plaints. The book consists of 3 Parts. The first is on pleadings generally, structure of a plaint, structure of a written statement, party's address signature, verification of pleadings, parties to suits and particular types of suits. The exposition of the principles and norms is simple and lucid. Part II is devoted to forms of plaints relating to suits of various categories like suit for accounts, suit on acknowledgment, suit for administration by a creditor, suit for wages by master of steamship, suit for setting aside an adoption, suit in respect of agency etc., providing in all 308 forms. Part III provides models of major petitions, including writ petitions and memoranda of appeals, totalling 134. They cover enactments like the Guardians and Wards Act, the Indian Lunacy Act, the Provincial Insolvency Act, Marriage and Divorce Acts, Arbitration Act, Motor Vehicles Act, the Registration Act and the Code of Civil Procedure. At the end of the forms brief and precise notes are given. The forms are so prepared that they can be adopted to meet a purpose other than the one for which it is specifically meant. The forms provided bear the imprint of one with considerable experience at the Bar. Relevant case law is also mentioned. The book should prove to be of immense assistance to junior members of the Bar in particular.

XXI. Interpersonal Conflict of Laws: India Pakistan and Bangladesh by *David Pearl* [Publishers: Stevens and Sons, London; N. M. Tripathi Pvt. Ltd., Bombay.] 1981.

Parties to a transaction may belong to different countries having their separate and independent legal systems with different rules applicable to similar relations. In such cases it becomes necessary for a Court to decide at the very start whether it has jurisdiction and if it has, which legal system would be applicable to the case. Sometimes it has also to consider whether a Judgment of a foreign Court already

given would bind the parties before it. These are topics of Conflict of Laws. Personal law clings to a person through a particular nexus with a legal regime like race, religion, tribe, nationality, domicile and residence. Conflict of laws can arise even between two persons belonging to the same religion. Two persons may be Muslims belonging to different schools or sects. governed by different rules of law. Inter-personal conflicts of law may thus exist within the same class of people. Equally such conflicts may arise where two Muslims belonging to the same school or sect have yet different principles of personal law applicable to them by reason of their membership of two different countries like India and Pakistan. Where such conflicts arise, what norms are applied by the Courts or statutes and why, in the solution of the disputes become an interesting topic of study.

In the instant book the author seeks "to extract from the case law and the statute books of India, Pakistan and Bangladesh a number of valid rules which are used by the Judges, either consciously or unconsciously, in order to decide on the applicability of one of the two or more competing laws." The author reaches in the process the conclusion that "the rules, to no small extent, reflect the ideological aspirations of Islam in the case of Pakistan, and the secular state in the case of India" (p.4). At page 149, the author states: "The Special Marriage Act (1954).. adopts a procedure to enable individuals who would normally be governed by a law peculiar to themselves to opt for a law of more general application", "an interesting strategen", "closer to the main purport of Article 44 (p. 148) and opines that India has not quite reached the stage where the "concept of choice" would be replaced by a uniform civil Code. As to Pakistan he observes (p. 165) "One religion is such a powerful force in the fight for the survival of the country that reform of the personal law of that religion has been difficult and will remain difficult."

It is a merit of this book that the entire subject of a particular branch of personal law is viewed completely in one place examining the conflicts involved therein, first from an inter-State angle and then from the angles of religious, class or regional differences. The book makes stimulating study throughout.

XXII. DESOUZA'S FORMS AND PRECEDENTS OF CONVEYANCING. Eleventh Edition [Publishers: Eastern Law House, Calcutta-700013.] Price Rs. 115.

Conveyancing is an art. It is an important part of a lawyer's equipment. Bad conveyancing is a fruitful source of litigation. There are not many goods books in this country with high reputation like Prideaux's Precedents in Conveyancing or Gibson's Conveyancing. Skill in conveyancing requires an adequate mastery of the background law also.

The book under review sterms from practica experiencing in conveyancing work. The book is divided into two Parts. Part I is devoted to conveyancing and other Instruments and Part II deals with Major Petitions to Courts. Starting with an Introduction covering History of conveyancing, capacity to convey, Operation and restraint on transfer, General requirements of deeds of transfer, Execution, Attestation etc., Part I addresses itself to Sales; Flat Ownership System; Mortgages and Pledges; Leases; Exchange; Will; Trust; Miscellaneous documents; Release; Partition; Partnership; Arbitration and Award; Guarantees; and Indemnities; Negotiable Instruments; Bonds; Apprenticeship; Power of Attorney; Agreement, Hire-Purchase, Receipt and Acknowledgment; Notice; Transfer of debutter property and Transfer of wakf Property: Part II adverts to Testamentary Petition; Guardianship; Insolvency; Divorce; Nullity of Marriage and Judicial Separation; Lunacy; Petitions under Labour Laws; Registration of a Co-operative Society; and Miscellaneous Documents. At the beginning of each subject a statement of relevant principles of law relating to it is made followed by model Forms. Bearing in mind that the task of a lawyer is not so much to know the law on any particular subject as to know where to find it, the instant book has endeavoured to guide the lawyer in that direction. Being designed not to serve as an Introduction to Conveyancing for use of law students but to assist legal practitioners, the book has treated the subject of Conveyancing from the practical and utilitarian angles. The fact that over a span of about 45 years it has passed through eleven editions vouches for its popularity.

XXIII. LECTURES ON CRIMINAL PROCEDURE by *R. V. Kelkar.* [Published by Eastern Book Company, 34, Lalbagh, Lucknow, 226001] 1980. Price Rs. 25.

Criminal law is an important agency of social control and is a faithful mirror of the civilisation of a community. Criminal procedure is a vital part of penal law concerning itself with the enforcement of such law and providing the machinery therefor. It is procedure that spells much of the difference between the rule of law and the rule of whim and caprice. But at the same time procedural prescriptions "are the hand-maid and not the mistress, a ubricant and not a resistant in the administration of justice."

The instant book gives a topic-wise treatment of the subject, consisting of twenty lectures covering all the important aspects of the Criminal Procedure Code, 1973. It is designed for class-room instruction and the exercise added at the end of each chapter should prove useful to the students. The principles are set out lucidly in the light of important decided cases highlighting those principles. It may be added that the decision of the Supreme Court in *Bai Jahira's case* 1979 S.C. 362, cited by the author at page 349 is followed and supplemented by that Court in *Fulzunbi* v. *Khader Vali,* (1981) I S.C.J. 199, where it observes: "The liquidated sum paid at the time of divorce must be a reasonable and not an illusory amount and will release the quondam husband from the continuing liability, only if the sum paid is realistically sufficient to maintain the ex-wife and salvage her from destitution which is the anathema of the law. This perspective of social justice alone does justice to the complex of provisions from section 125 to section 127 of the Criminal Procedure Code." To capture and hold the interest of the students the seminal facts of he leading decisions could also have been given. The book is a welcome publication and should prove useful to students and teachers alike as a dependable guide on *the subject.*

———

XXIV. SAHA'S CRIMINAL REFERENCE by *A.N. Saha,* Second Edition, 1979. [Published by Eastern Law House Private Ltd. Calcutta 700013.] Price Rs. 110.

This book of 1033 pages is mainly a compilaton of case law under various statutory provisions bearing on or touching criminal liability, law and procedure intended to serve as a ready reference. The compilation covers Interpretation of Statutes; constitutional principles of Criminal Liability; General Principles of Criminal Prosecution; Arms Act, 1959; Army Act 1950; Child Marriage Restraint Act. 1929; The Companies Act, 1956; Contempt of Courts Act, 1971; COFEPOSA Act 1974; Copyright Act, 1957; Criminal Law (Amendment) Act 1952; Code of Criminal Procedure, 1973; Customs Act, 1962; Essential Commodities Act, 1955; Explosives Act, 1884; Explosive Substances Act, 1908; Factories Act 1948: The Foreigners Act, 1949; Identification of Prisoners Act, 1920: Indian Electricity Act, 1910; Indian Evidence Act, 1872; Indian Penal Code, 1860; Motor Vehicles Act, 1939; Prevention of Corruption Act. 1947; Prevention of Food Adulteration Act, 1955; Prohibition Law; Provincial Insolvency Act, 1920; Public Servants (Inquiries) Act, 1850; Railway Property (Unlawful Possession) Act, 1966; Special Marriage Act, 1954; Suppression of Immoral Traffic in Women and Girls Act, 1956 and Extracts from Police Regulations, Bengal. The coverage may not be exhaustive of legislation containing penal provisions but is fairly full. The author has at some places, in foot notes, given brief criticisms of decisions and indicated that they require reconsideration. There is a brief and interesting reference to Mahomdan Criminal Jurisprudence at pages 666-667 in surveying the historical development behind the Indian Penal Code. There is a glossary of Latin technical and other terms adding to the utility of the work. The Addenda bring up to date the cases digested. The book is a useful publication, particularly helpful to lawyers.

———

XXV. COMMERCIAL REFERENCE by *K.Venkoba Rao,* 1980. [Published by Eastern Law House, Calcutta-700 013.] Price Rs. 135: £10: $20.

The instant book with about 1160 pages of running matter, corrigenda of about 10 pages and Supplement of more than 325 pages, covers the whole spectrum of case law of commercial titles, in 70 chapters, also taking in allied laws like labour laws, economic laws, insurance laws customs excise etc. These apart there is a Historical introduction packed with information and a masterly subject index taking in the minutest details and leaving no matter latent. The seventy chapters cover Accident Insurance; Apprentices Act, 1961; Arbitration Act, 1940; Banking; Banking Regulation Act, 1949; Bill of Lading and Charter Parties; Carriage by

Air Act, 1972; (The Indian) Carriage of Goods by Sea Act, 1925; Carriers Act, 1865; Central Excise and Salt Act, 1944; Code of Civil Procedure 1908; Companies Act, 1956; Conflict of Laws; Contract Act, 1872; Court Fees; Customs Act, 1962: Dock Workers Regulation and Employment Act, 1948; Employees Provident Funds and Family Pension Fund etc. Act, 1952; Employees State Insurance Act, 1948; Essential Commodities Act, 1955; Factories Act, 1948; Fidelity Insurance; Fire Insurance: Foreign Exchange Regulation Act, 1973; Forward Contracts (Regulation) Act, 1952; Government Contracts and Government Companies; Hire Purchase Act. 1972: Imports and Exports (Control) Act, 1947; Industries (Development and Regulation) Act, 1951; Industrial Disputes Act, 1947; Industrial Establishments (National and Festival Holidays) Act, 1958; General Principles of Insurance Law; Insurance Act, 1938; Land Acquisition Act, 1894; Liability Insurance; Life Insurance: Life Insurance Corporation Act, 1956; Limitation Act, 1963; Marine Insurance Act, 1963; Master and Servant; Merchant Shipping Act, 1958: Mines Act, 1952; Minimum Wages Act, 1948; Monopolies and Restrictive Trade Practices Act, 1969; Motor Insurance; Motor Vehicles Act, 1939; Motor Transport Workers Act, 1961; Negotiable Instruments Act, 1881; Partnership Act, 1932; Patents Act, 1970; Payment of Bonus Act, 1965; Payment of Gratuity Act, 1972; Payment of Wages Act, 1936; Property Insurance; Provincial Insolvency Act, 1920; Railways Act, 1890; Registration Act, 1908; Reinsurance; Securities Contracts (Regulation) Act, 1956; Sale of Goods Act, 1930; Societies Registration Act, 1860; Solvency Insurance; Specific Relief Act, 1963; Stamp Act, 1899; Third Party Risks Insurance; Trade and Merchandise Marks Act, 1958; Trade Secrets; Trade Unions Act, 1926; Transfer of Property Act, 1882; Weekly Holidays Act, 1942 and Workmen's Compensation Act, 1923.

The author has always brought to bear a fresh outlook and approach in the books he has writtten on various subjects. In the book under notice also, being aware that the doctrine of judicial precedents in vogue in this country involves considerable labour and research to get at the necessary decison he has by a skilful use of sections, headings, etc., extracted the essence of the case law under each Statute or under the common law in the absence of any statute and has not hesitated in the process to draw upon decisions rendered in England and the countries subject to Common Law influence, thereby saving a lot of hunting up of precedents by a legal practitioner and providing him with ready reference. In subjects like Company law there is a judicious reference to Departmental circulars. Notifications made under the Customs, Excise, etc. Acts and COFEPOSA Act have also been taken into account. The book will serve as a handy *vade mecum* for the user.

XXVI. THE MONOPOLIES AND RESTRICTIVE TRADE PRACTICES ACT by *N. K. Sen Gupta*. Second Edition. [Published by Eastern Law House, Calcutta-700013.] 1980. Price Rs. 80: £ 10: $ 20.

Among the important pieces of economic legislation, the Monopolies and Restrictive Trade Practices Act, 1961, which has been in force sine 1st June, 1970, occupies a prominent place. The first country to attempt control by legislation of monopolies and restrictive trade practices was the U. S. A. The Sherman Act passed in 1890 prohibiting combinations of all kinds declared illegal all contracts in restraint of trade and the monopolising or attempting to monopolise any part of the trade among the several states or with foreign countries. In 1914 were passed the Federal Trade Commission Act and the Clayton Act, the first of them setting up the federal trade commission with executive and enforcement authority, and the second prohibiting price discrimination, exclusive dealing arrangements and tying contracts; acquisition of shares in another company; and interlocking directorates. In the United Kingdom, the Monopolies and Restrictive Practices (Inquiry and Control) Act of 1948 set up the Monopolies and Restrictive Practices Commission to initiate inquiries on reference of a case by the Government and suggest remedies to the Board of Trade. Then came the Restrictive Trade Practices Act of 1956 establishing a new Court, the Restrictive Practices Court to adjudicate all cases brought before it by the Registrar of Restrictive Trade Practices whose duty was to register all such agreements and initiate proceedings before the Court on the ground that the impugned agreement was against the public interest. The effect of this Act was that the task of deciding what agreements or arrangements among businessmen were against the public interest was removed from the inquistorial purview of the administrative commission and the Govern-

ment and entrusted to the judiciary. The Monopolies and Mergers Act of 1965 enpowered the Board of Trade to prohibit mergers and amalgamations. The Indian Monopolies and Restrictive Trade Practices Act, 1969 drew inspiration from the British legislation but differs from it in several respects. To the concept of monopoly found in the U. S. and U. K. Acts, the M. R. T.P. Act has added that of concentration of economic power. The working of the provisions of the Act has been reviewed by the Rajender Sachar Committee on Companies Act and M. R. T. P. Act appointed in 1977, which has made a number of recommendations to plug loopholes in the M. R. T. P. Act and also make some structural changes.

The book under review provides a sectionwise commentary on the provisions of the M. R. T. P. Act taking into account English American and Indian decisions. The author, endeavours to show how the crtticisms of the Act, either that it stifles industrial growth and is unnecessary or that it is ineffective to achieve its objects are often misconceived. The Note to Practitioners given at the commencement focussing attention to the major issues in connection with the day to day working of the Act with which corporate lawyers, company secretaries and others are concerned is sure to prove helpful to those interested in the Act. The Introduction "Anti-Monopoly Law—A world perspective" shows how apart from the influences of the anti-monopoly laws of the Western World "a whole set of domestic. strands of policy, opinions and traditions came together in weaving the fabric of our M. R. T. P. Act." The annotations are practical and helpful carrying assurance and authority.

———

XXVII. ARBITRATION by *Roy Chowdhury* and *Saharay*, 1979 [Publishers: Eastern Law House Private Ltd., Calcutta-700013]. Price Rs. 80: 8 £:$ 16.

Arbitration as a parallel mechanisim to the regular judicial machinery, leaving however the supervision and enforcement powers with the Court in respect of arbitration proceedings and awards, has been in vogue for a long time. It provides a cheap and relatively expeditious remedy. An arbitrator is a private extraordinary Judge chosen by consent of parties. As pointed out in *Crawford* v. *A. E. A. Prouting Ltd.*, (1972) 1 All E. R. 1199, in a litigation the defendant may remain inert but in an arbitration both the parties are responsible for speedy disposal of the reference. The Indian Arbitration Act, 1940, now governs arbitrations. Foreign awards however are not governed by this Act but by the Arbitration Protocol and Convention Act, 1937.

The book under review is divided into six Parts. Part I contains the Introduction wherein the authors trace the origin and modern development of arbitration law. Part II provides a sectionwise commentary on the provisions of the Arbitration Act of 1940. Part III deals with the different types of problems arising in relation to arbitration matters and suggests solutions. Part IV is devoted to the basic rules of law emerging from the English and Indian decisions. Part V contains an assortment of decisions of the Privy Council, the Federal Court and the Supreme Court bearing on the application of the basic principles of arbitration law. Part VI contains select English decisions. The Appendix furnishes High Court Rules, and Regulations of arbitral proceedings in different Chambers of Commerce and Associations in India and elsewhere. A comparative table of the Indian and the English Arbitration Acts is also provided. Though quite a mass of case law, English and Indian, have been noticed, fairly important rulings like Re *Willesden Local Board and Wright*, (1896) 2 Q. B. 412, holding that a declaratory award cannot be made a rule of the Court, *Montrose Canned Foods Ltd.* v. *Eric Wells Merchants Ltd.*, (1973) 8 W. L. R. 847, stating that an arbitrator should have power to make an award in currency other than sterling, *Yusuf Sheriff* v. *Akbar Sheriff*, 88 L. W. 516, deciding that from the fact that the arbitrator is the husband of one of the parties it cannot be assumed that the arbitrator will not be impartial, etc., may also have been noticed. The instant book, by and large, has incorporated a wealth of materials and treated the subject analytically and lucidly. The book is a welcome addition to the standard works on the subject.

———

XXVIII. THEORY AND PRACTICE OF VALUATION by *A. K. Mitra*. [Published by Eastern Law House, Calcutta, 700013.] 1980. Price Rs. 85.

Broadly stated valuation is an estimation or determination of the money value of any property or thing and valuer is the person who estimates the worth or price of the property. Scientific valuation of properties is relatively recent in this country but is becoming increasingly important ever since taxes have come to be imposed on the possession and transfers of property *inter vivos* or by operation of law as in the case of testamentary or intestate succession. Property tax, gift tax, wealth tax, capital gains tax, death duties etc., apart from penal laws have been enacted imposing drastic penalties in case of wilful tax evasion. Saving exceptional cases stemming from distress or pressure, transactions relating to property are based on mature thinking. A person cherishes his property for enjoyment or as a source of yielding profit on resale or as investment. The person may be a full or absolute owner, limited owner or owner with a clog or sharing the interests in the property as lessor and lessee. The property may be urban or rural; developing developed or undeveloped: vacant land or land, with structures; agricultural land, building sites etc. A myriad factors enter into the question of valuation, like locus, area, potentialities, demand, prospect etc. It is no longer a case of one man's guess being as good as another man's in the matter of valuation. Judicial decisions in England and India have recognised a number of norms for rating and valuation and in the matter of land acquisition. No doubt the legislative injunction in taxing statutes may not, except on pain of penalty, be violated, but it may be lawfully circumvented" as recognised by the Supreme Court in *C.I.T.* v. *Raman* and *Co.*, 1968 S C. 49. It becomes therefore necessary for every property-owner to know the legal position to enable him to plan his affairs to the best of his advantage within the limitations set by law.

The instant book deals with the subject of valuation in 18 chapters under the following heads: (1) Open lands, (2) Cost of structures (3) estimates of typical buildings, (4) analysis of rates (5) Depreciation, (6) land and building method, (7) rental method, (8) valuation on profit basis, (9) leasehold interests, (10) ownerships with clogs, (11) selection of measuring unit (12) popular misconceptions, (13) life interests, (14) business units other than companies with quoted shares; parttnership firms, (15) urban assets components of unquoted shares, (16) agricultural lands and farm houses, (17) valuation for direct taxes and (18) important decisions. The author's approach is with the conviction that it is naive to presume that transactions in the property market are void of rational thinking or are not capable of mathematical analysis. He has discussed the several modes of valuation like the break-up method, land and building method, plinth area and cubical content method, income-capitalisation method, etc. The considerations that sway the minds of investors are analysed with the help of mathematical tables which are appended. In the chapter captioned "Important decisions" the relevant judgments elucidating the law of valuation are set out. The book under review has stated what *prima facie* is technical in language facilitating understanding and should serve well all those interested in the subject.

XXIX. Company Meetings and Resolutions by *C.R. Datta*, 3rd edition. 1980 [Published by Eastern Law House, Calcutta-700013]. Price Rs. 80/: £. 8: $ 17.

The law and practice relating to company meetings form an important part of company law. Various types of meetings have been provided for with penal consequences for infractions in many cases. A knowledge of the relevant provisions of the Companies Act and the Regulations of Table A to the Act is thus a "must" to all associated or having dealings with a company. Under the Act every company with a paid-up share capital of Rs. 25 lakhs or more shall have a whole-time Secretary. Other companies may or may not have such a Secretary. Anyway wherever there is one he must be a person possessing the prescribed qualifications. It is true that he has no managerial functions but on him is cast the onerous duty of ensuring that the affairs of the company are conducted in accordance with the provisions of the Act and the articles of association of the company.

In the present book, apart from setting out the principles of law and practice relating to company meetings like Board meeting, Statutory meeting, Annual general meeting, Extraordinary general meeting, Requisitioned meeting, Shareholders' class meeting, Meetings of members' and Creditors' voluntary winding up, Debenture Holders meeting, Liquidator's meetings of creditors and contributories and Court meetings of creditors and contributories, the author has also dealt with

the Board meetings of Regional Rural Banks, Club meetings, Gram Panchayat meetings and Municipality meetings. The justification for including these topics, at any rate the last two is not quite apparent. Further in the case of the last two types of meetings, the statement of the law is with reference to theWest Bengal Panchayat Act, Rules framed thereunder and bye-laws on the one hand and the Bengal Municipal Act, 1932, and Calcutta Municipal Act, 1951 and statutes made as regards meetings. These can have only a limited appeal outside Bengal. The position of the Company Secretary has been discussed from its several angles and aspects and the author has done well in providing a number of schedules, tables and lists which would be useful to the Secretary and for his convenience. The present edition contains more than 200 illustrative forms of notices, agenda, minutes, reports. poll-papers, resolutions, etc., enhancing the utility of the book to persons who have to conduct or deal with meetings. The book will be of great assistance to professionals and students of company law.

XXX. Income Tax Rulings by *Chatur Vedi and Pithisaria* [Published by the Eastern Law House, Calcutta.] Price Vol. I Rs. 128, Vol. II Rs. 145.

Two Volumes of the above book have been published. This book contains the Rulings on Income Tax Cases of all the leading Indian and Foreign Courts. This Publication for all practical purposes fulfills the role of a Digest devoted exclusively to tax cases. The rulings have been collected and given under appropriate subject headings so as to facilitate easy reference. In other words as the author himself has expressed rightly it is a mirror-like exposition to instantly locate and find the immediately wanted material.

The arrangement of the subject-matter adopted by the author is perfect. Section 1 gives cases on general topics pertaining to taxation like Power to tax, Validity of Legislation. Interpretation of Taxing statutes etc. The other sections have been arranged section-wise of the Income-tax Act and the relevant rulings on each section have been given under appropriate topical headings. This arrangement makes the book a ready reckoner and fulfills 'a long standing gap as a guide and instant help book',

Volume. I of the book deals with sections 1 to 20 and Volume 2 with sections 28 to 36 of the Income-tax Act. Each volume contains at its end a topical general Index which will be useful and enhances the utility of the book.

This book will be found to be useful by the members of the legal professions particularly to those practising in the field of income-tax.

XXXI. After Assessment Proceedings in Taxation by *Satyanarain Dokania*. [Published by the Eastern Law House, Calcutta.] Price Rs. 100. £ 8. $ 15.

In the above book under review the author has made a bold venture to collect the various provisions relating to appeals, revisions reference and rectification and arranged them in order. He has also added a useful commentary to these various provisions supported by the decisions of various High Courts and Supreme Court.

Really it is the aftermath of the assessment that creates problems to an assessee. The author has also pointed out and discussed in detail the various remedies that a tax payer can resort to under the Constitution.

The arrangement adopted is good. The book is divided into various parts and the subject under each part is arranged in a systematic and useful manner and dealt with thoroughly and exhaustively. The author has given in Part II of the book the relevant extract from taxation Acts, Rules and the relative forms. At the end of the book the author has given a well-planned and neatly arranged subject Index which makes the task of reference to the book easy. This book will be of immense help and assistance to the tax payers, tax practitioners, chartered accountants and Auditors.